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NOTES OF RECENT CASES.

[SUPREME COURT.]

S. R. Das, C.J., T. L. Venkatarama Aiyar, S. K. Das, A. K. Sarkar and Vivian Bose, JJ.
27th November, 1957.

Sardar Syedna Tehar *v.* State of Bombay.
C.A. No. 99 of 1954.

Constitution of India (1950), *Articles* 132 *and* 133—*Certificate of fitness for appeal—If can be granted in respect of interlocutory orders—Appeal not competent under Article* 132 —*Grant of certificate—Effect.*

"We are clearly of the opinion that the appeal is not competent under Article 132 of the Constitution and the fact that the certificate has been given does not alter the position. It is said that the certificate is also under Article 133 of the Constitution, but under that Article also, an appeal lies only against judgments, decrees and final orders and so certificate could not be granted in respect of the interlocutory finding."

1948 P.C. 66 considered.

N. C. Chatterjee, for Appellant.

P. A. Mehta, for Respondent.

G. R. *Appeal dismissed.*

[SUPREME COURT.]

S. R. Das, C.J., T. L. Venkatarama Aiyar, S. K. Das, A. K. Sarkar and Vivian Bose, JJ.
3rd December, 1957.

P. Balakotiah *v.* Union of India.
C.As. Nos. 46-48 of 1956.

Railway Services (*Safeguarding of National Security Rules*, 1949)—*Constitution of India* (1950), *Articles* 14 *and* 19 (1) (*c*) *and* 311.

The Railway Services (Safeguarding of National Security) Rules, 1949, did not contravene the provisions of Articles 14, 19 (1) (*c*) and 311 of the Constitution.

The order terminating the services under rule 3 of the Security Rules stands on the same footing as an order of discharge under rule 148 and it is neither one of dismissal nor of removal within the meaning of Article 311.

H. J. Umrigar, for Appellants in C.A. Nos. 46 and 47 of 1956.

D. L. Jiwan, for Appellant in C.A. No. 48 of 1956.

Ganapathi Aiyar, for Respondent.

G. R. *Appeals dismissed.*

[SUPREME COURT.]

B. P. Sinha, S. J. Imam, and J. L. Kapur, JJ.
3rd December, 1957.

S. A. Venkataraman *v.* State.
Cr. A. No. 130 of 1956.

Prevention of Corruption Act (II of 1947), *section* 6—*Scope*—*A public servant*—*If includes one who has ceased to be in service*—*Previous sanction*—*If essential for taking congnizance of offence committed by such person.*

Section 6 of the Prevention of Corruption Act was not applicable to a person who had ceased to be a public servant at the time when the Court was asked to take cognizance of the case against him. Section 6 certainly does prohibit the taking cognizance of his offence without a previous sanction, while he is still a public servant, but that prohibition does not continue after he has ceased to be a public servant

N. C. Chatterjee, for Appellant.

C. K. Daphtary, Solicitor-General of India, for Respondent.

G. R. *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, S. J. Imam and J. L. Kapur, JJ.
3rd December, 1957.

V. D. Jingan *v.* State of U.P.
Cr. A. No. 25 of 1956.

Prevention of Corruption Act (II of 1947), *section* 6—*Criminal Procedure Code (V of* 1898), *sections* 173 *and* 561-*A*—*Scope.*

A withdrawal of a case resulting merely in a discharge did not prevent the prosecution being recommenced on a fresh complaint. When the fresh complaint was filed the appellant was not a public servant and, therefore, the Court could take cognizance without a previous sanction under section 6 of the Prevention of Corruption Act.

J. G. Sethi, for Appellant.

G. C. Mathur, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

N. H. Bhagwati, B. P. Sinha, S. J. Imam, J. L. Kapur and P. B. Gajendragadkar, JJ.
6th December, 1957.

Jagannath Behera *v.* Raja Harihar Singh.
C.A. No. 309 of 1955.

Orissa Tenants Protection Act (III of 1948), *and Article* 19 *of the Constitution*—*Jurisdiction of revenue officer.*

"The revenue officer would have jurisdiction to entertain the dispute between the appellants and the respondent which arose out of his action in evicting them from his lands."

G. C. Mathur, for Appellant.

C. K. Daphtary, Solicitor-General of India, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

S. R. Das, C.J., T. L. Venkatarama Aiyar, S. K. Das, A. K. Sarkar and Vivian Bose, JJ.
13th December, 1957.

Khem Chand *v.* Union of India.
C.A. No. 353 of 1957.

Constitution of India (1950), *Article* 311 (2)—*Government of India Act,* 1935—*Section* 240—*Scope.*

Before a Government servant is dismissed or removed or reduced in rank, he should be given an opportunity to not only defend himself against the charges levelled

against him by cross-examining witnesses, but should have also an opportunity to make his representation against the punishment proposed to be inflicted on him. It is true that Article 311 (2) does not, in terms, refer to different stages at which opportunity is to be given to the officer concerned. All that it says is that the Government servant must be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. He must not only be given an opportunity, but such an opportunity must be a reasonable one. In order that the opportunity to show cause against the proposed action may be regarded as a reasonable one, it is quite obviously necessary that the Government servant should have the opportunity to say if that be his case, that he has not been guilty of any misconduct to merit any punishment at all, and also that the particular punishment proposed to be given is much more drastic and severe than he deserves.

1945 F.C.R. 103 : (1945) 2 M.L.J. 270 : 1945 F.L.J. 129 (F.C.), considered.

J. Sharma, for Appellant.

C. K. Daphtary, Solicitor-General of India, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

S. R. Das, C.J., T. L. Venkatarama Aiyar, S. K. Das, A. K. Sarkar and Vivian Bose, JJ.
18th December, 1957.

State of Kerala *v.* P. J. Joseph.
C.A. No. 172 of 1954.

Cochin Abkari Act (1077) 1902—*Constitutional validity—Articles* 14 *and* 19 (1) (*g*) *of the Constitution of India—Impost not authorised by law.*

An impost not authorized by law, could not possibly be regarded as a reasonable restriction and must, therefore, infringe the right of the respondent to carry on his business which was guaranteed to him by Article 19 (1) (*g*) of the Constitution. The impost was nothing but an executive order, if an order it was, which had no authority of law to support it and was, therefore, an illegal imposition.

U. M. Isaac with *S. Bahadur*, for Appellant.

P. Govindan Nair, with *K. Pillai* for Respondent.

G. R. *Appeal dismissed.*

[SUPREME COURT.]

N. H. Bhagwati, B. P. Sinha, S. J. Imam, J. L. Kapur, and P. B. Gajendragadkar, JJ.
18th December, 1957.

C. I. Spg. & Mfg. Co. *v.* Wardha Municipality.
C.A. No. 119 of 1953.

Interpretation of Statutes—C. P. & Berar Municipalities Act (II of 1922), *sections* 66 (1) *and* 83 (2)—*Terminal Tax—"Imported into or exported from limits of Municipality."*

In construing the words of a statute if there were two possible interpretations, then effect was to be given to the one that favoured the citizen and not the one that imposed a burden on him.

C. K. Daphtary, Solicitor-General of India, for Appellant.

A. V. Viswanath Shastri, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

N. H. Bhagwati, T. L. Venkatarama Aiyar, S. K. Das, A. K. Sarkar and Vivian Bose, JJ.
20th December, 1957.

Bombay Dyeing & Mfg. Co. *v.* State.
C.A. No. 167 of 1954.

Bombay Labour Welfare Fund Act of 1953, *section* 3 (2) (*a*) *and* (*b*)—*Constitutional validity—Articles* 19 (1) (*f*) *and* 31 (2) *of the Constitution—Payment of Wages Act* (*IV of* 1936), *sections* 8 *and* 15—*Contract Act* (*IX of* 1872), *section* 56—*Limitation Act.*

"The real point for determination is whether on payments of the amounts in accordance with section 3 (1) of the Bombay Labour Welfare Fund Act, the employer gets a discharge of his obligations to the employees in respect of wages due to them.

We are of the opinion that even if the matter is governed by section 56 of the Contract Act the employer is no more discharged than by the operation of the bar of limitation under section 15 of the Payment of Wages Act or the provisions of the Limitation Act. In this view it must be held that the provisions of the impugned Act are unconstitutional in that they take away the property of the appellant in violation of either Article 19 (1) (*f*) or Article 31 (2) of the Constitution." The Court held that section 3 (2) (*b*) of the Act was void and section 3 (2) (*a*) was valid and the appeal was therefore partially allowed.

R. J. Kohla, for Appellants.

H. M. Seervai, for Respondents.

G.R. — *Appeal partially allowed.*

Ramaswami, J.
4th November, 1957.

Krishnamurthi, *In re*.
S. R. No. 27517 of 1957.

Court-fees—Refund of—Memorandum of Appeal with deficit Court-fee—Returned and not re-presented—Appeal becoming unnecessary—Refund of Court-fee paid—When permissible.

Where an appeal which has been registered and numbered is withdrawn as having become unnecessary no refund of Court-fee can be ordered.

I.L.R. 57 Mad. 1028 : 67 M.L.J. 321 and (1937) 2 M.L.J. 788, referred.

But where an appeal was presented with a deficit Court-fee and was returned but was not re-presented as having become unnecessary, though no refund of Court fee could be ordered by Court under the previous Court-fees Act, still the Court could issue a certificate that the appeal was not numbered and direct the appellant to apply to the Revenue Authorities for ex-gratia refund as in the case of spoiled stamps.

[Policy of the Legislature that refund in such cases is just and equitable as indicated by section 66 (1) of the Madras Court-fees and Suits Valuation Act, 1955, pointed out].

(1950) 1 M.L.J. 222, followed.

T. S. Santhanam, for Appellant.

R.M. *Orders accordingly.*

Somasundaram, J.
15th November, 1957.

Public Prosecutor *v.*
Sami Venkataraman.
Crl. Appeal No. 95 of 1957.

Prevention of Food Adulteration Act (XXXVII of 1954), *sections* 10 (7) *and* 16 (1) (*b*) *—Preventing an Inspector from taking sample—When an offence—Necessity for witnesses —When arises.*

In order to make out a case that an offence under section 16 (1) (*b*) of the Prevention of Food Adulteration Act has been committed it should be established that the articles of food, a sample of which was sought to be taken by the Inspector and which was prevented, was intended for sale. If the article was in a shop then there would be a presumption that it was intended for sale. But where it was in a house it should be proved that it was intended for sale. Only then the prevention of an Inspector from taking sample would amount to an offence under section 16 (1) (*b*) of the Act. Section 10 (7) of the Act relating to witnesses being taken will be attracted only when a sample is taken. Where the Inspector is prevented from

taking the sample there is no question of any witnesses being taken under section 10 (7) of the Act.

The Public Prosecutor (*P. S. Kailasam*), for Appellant.

S. Mohan Kumaramangalam and *K. V. Sankaran*, for Respondent.

R.M. ——— *Appeal dismissed.*

[FULL BENCH.]

Rajagopalan, O.C.J., Ramaswami and Rajagopala Ayyangar, JJ.
18th November, 1957.

Board of Revenue, Madras *v.* Madalai Nadar and Co.
R.C. No. 107 of 1956.

Stamp Act (II of 1899), *Articles* 19 *and* 39 (*b*) *of Schedule* 1-*A* (*Madras Amendment*)—*Deed of dissolution of partnership—Partner relinquishing his interest in the partnership properties—If amounts to conveyance.*

A deed of dissolution of partnership which recites that the outgoing partner shall have no interest whatsoever in any of the properties of the partnership and provides for the ascertainment of the profits payable to such partner cannot be said to amount also to a conveyance deed of the interest of the outgoing partner. Any payment made to such a partner when the partnership was in existence cannot be construed to be the consideration to render the deed of dissolution of partnership as one of conveyance. Such a deed is chargeable to stamp duty only under Article 39 (*b*) of Schedule 1-A of the Stamp Act and not under Article 19.

I.L.R. 32 Bom. 505 ; (1955) 2 M.L.J. 166, distinguished.

The Government Pleader (*B. V. Viswanatha Ayyar*), for Petitioner.

M. Subbaroya Ayyar, V. Sethuraman, S. Padmanabhan and *S. V. Subramaniam*, for Respondent.

R.M. ——— *Reference answered accordingly.*

Ramaswami, J.
20th November, 1957.

Janakiram *v.* Nagammal.
C.R.P. No. 543 of 1957.

Madras Buildings Lease and Rent Control Act (XXV of 1949), *section* 7 (2) (*iv*)—*Acts of nuisance—Use of indecent and vulgar language by tenant—If a ground for eviction—Sections* 12 *and* 12-*B*—*Appellate authority—Duty to give reasons for interfering with orders of Rent Controller.*

Where a tenant and her daughter indulge in quarrels among themselves using vulgar and indecent language and abuse other tenants in indecent language, such conduct will amount to nuisance entailing eviction under section 7 (2) (*iv*) of the Madras Buildings Lease and Rent Control Act.

Where the Rent Controller has discussed the evidence and has given reasons for his order, it is not proper for the appellate authority under Act to set aside the order by merely saying that the evidence is vague. It is the duty of the appellate authority, while interfering with an order of the Rent Controller, to give his reasons for not accepting the evidence on record.

T. R. Sundaram, for Petitioner.

T. M. Venugopala Mudaliar, for Respondent.

R.M. ——— *Petition allowed.*

Somasundaram, J.
20th November, 1957.

Meenal *v.* Subbiah Naidu.
Crl. Appeal No. 417 of 1957.

Madras District Police Act (V of 1861), *section* 53—*Prior notice of intended action against police official—Scope of provision.*

Section 53 of the Madras District Police Act refers to two kinds of proceedings, *viz.*, actions and prosecutions that may be brought against a police officer by persons complaining of their conduct. Actions are treated as different from prosecutions. While the period of limitation of three months before which the proceedings should

commence apply both to actions and prosecutions the requirement as to one month's notice applies only to actions, which mean civil actions as distinguished from prosecutions which are criminal in nature. In respect of criminal prosecutions no such notice is necessary under section 53 of the Act.

K. Narayanaswami Mudaliar and *N. Thirugnanasundaram*, for Appellant.

The Public Prosecutor (*P. S. Kailasam*) for Respondent.

R.M. ——— *Appeal allowed.*

Ramaswami, J.
25th November, 1957.

Narayanaswami Chettiar, *In re.*
S.R. No. 26480 of 1957.

Civil Procedure Code (V of 1908), Order 20, rule 11 (2) and section 47—Order on an application for payment of decree amount in instalments—If appealable under section 47 of the Code.

An order passed on an application under Order 20, rule 11 (2), Code of Civil Procedure (as amended in Madras) permitting a judgment-debtor to pay the decree amount in instalments, is one passed in exercise of the judicial discretion of the Court after hearing both sides and as such an appeal against such an order would lie under section 47 of the Code.

4 Rang. 24; A.I.R. 1931 Rang. 152; A.I.R. 1943 Nag. 437, followed.

N. K. Mohanarangam Pillai and *N. K. Pattabiraman*, for Appellant.

The Government Pleader (*B. V. Viswanatha Ayyar*), for Respondent.

R.M. ——— *Office note answered accordingly.*

Ramaswami, J.
11th December, 1957.

Nallasivam Chettiar *v.*
Avudayammal.
C.M.P. No. 8133 of 1957
(S.A. No. 1056 of 1954).

Practice—Directions given by the High Court (in a pending second appeal) to the lower Court to determine the quantum of money to be paid to a claimant—Subsequent disposal of the second appeal itself—If takes away the power of the lower Court to enquire into the earlier application.

In a second appeal pending before it the High Court passed orders on a Civil Miscellaneous Petition directing the lower Court to determine the quantum of marriage expenses to be provided for one of the defendants out of the joint family funds. During the pendency of the proceedings in the lower Court in pursuance of the aforesaid direction the second appeal itself was disposed of finally by the High Court. It was contended that the disposal of the second appeal automatically terminates the proceedings before the lower Court commenced in pursuance of the earlier directions of the High Court.

Held that the lower Court can proceed and complete the enquiry in pursuance of the earlier directions even though the main appeal itself has been disposed of by the High Court. If any party is aggrieved by any order of the lower Court in that behalf it is open to them to file an appeal against the said order treating it as an interim decree or agitate the matter in an appeal against the final decree as the circumstances may require.

Section 151, Civil Procedure Code, does not enable a party to file an application in the High Court, after the disposal of the second appeal, for directions that the lower Court is not competent to proceed with the inquiry in pursuance of the earlier directions.

I.L.R. 35 All. 159; (1951) 2 M.L.J. 176; I.L.R. 57 All. 977, referred.

R. Desikachari, T. S. Arunachalam, Fyzee Mohammad and *N. K. Panchapakesan*, for Petitioner.

A. Balasubramaniam (*amicus curiae*), for Respondent.

R.M. ——— *Petition dismissed.*

Basheer Ahmed Sayeed and Subramanyam, JJ.
30th October, 1957.

Venkataraman and Co. *v.* Union of India.
Appeal No. 957 of 1953.

Railways Act (IX of 1890), sections 55 *and* 56 *and Condition* 10 *of the Railway Receipt—Right of Railway Management to sell the goods consigned—When can be exercised —Duty to give notice—If can be contracted out of—Suit for damages for conversion—Limitation for—Limitation Act (IX of* 1908) *Articles* 31, 36 *and* 48.

A Railway administration has a right to sell the goods consigned to them for carriage only in accordance with the provisions of the law authorising them in that behalf. Any sale of the goods delivered to them contrary to the provisions of the Statute will be without legal authority and wrongful and the Railway will be guilty of conversion. It is not open to the Railway to contract itself out of the statutory obligations.

Where the goods consigned remain un-claimed and the owner of the goods is known the Railway is under a statutory duty to give the notice required by section 56 (1) of the Railways Act before exercising their right of sale. The right to sell will accrue to them only when such a notice is given. Any sale in contravention of the provisions of the section will be invalid. The procedure to be followed in regard to the sale is laid down under section 55 (2) of the Act. The fact that the Railway is authorised, under section 55 or condition 10 of the forwarding note, in certain cases to sell the goods in their custody for non-payment of charges does not mean that the railway is at liberty to sell the goods of a consignor without any notice to him merely because the goods are likely to get deteriorated. In cases of perishables a sale without notice might be justified only if the right to sell has accrued under section 56 of the Act.

A suit for damages for wrongful conversion will be governed by Article 31 of the Limitation Act and not Article 48.

Quaere.—Whether Art. 36 can apply?

A.I.R. 1934 Pat. 507 Diff.

29 M.L.J. 342 : I.L.R. 39 Mad. 1 (F.B.) Ref.

V. C. Gopalaratnam and *L. V. Krishnaswami Ayyar* for Appellant.

S. S. Ramachandra Ayyar for Respondent.

R.M. *Decree in part.*

Ganapatia Pillai, J.
8th November, 1957.

Muthukrishna *v.* Meenakshi.
S.A. No. 16 of 1956.

Husband and Wife—Joint possession and enjoyment of properties as per compromise decree for maintenance and separate residence—Subsequent resumption of cohabitation—Effect of—Pending suit for partition and possession on the basis of the decree for separate residence and maintenance—Sustainability.

A suit instituted by a wife against her husband for separate maintenance was compromised granting the wife a right to joint possession and enjoyment of certain properties, along with her husband and if such joint possession is impracticable, a right to partition and separate possession. On this basis the wife filed a suit for partition and pending this the wife resumed cohabitation with her husband. It was contended that the resumption of cohabitation has rendered the decree for separate maintenance ineffective, and as such the suit for partition has to dismissed *in limine*.

Held that a resumption of cohabitation with the husband would generally be sufficient to render ineffective a decree for separate maintenance obtained by the wife against her husband as the very basis of the decree has ceased to exist and it is not necessary to show further that the cause which rendered such a decree necessary has also been removed. The position may however be different in cases where under a tentative arrangement, with no intention of abandoning her rights under the decree, the wife temporarily agrees to live with her husband. Even so in cases where the union was brought about by deceit or compulsion.

(1941) 2 M.L.J. 263 : I.L.R. 1942 Mad. 24 : (1948) 2 M.L.J. 519 : I.L.R. 1949 Mad. 613, Referred.

(1956) 2 M.L.J. 610, Followed.

(1943) 2 M.L.J. 359 : (1948) 2 M.L.J. 579, Dist.

The subsequent suit for partition based on such a decree, which has since become ineffective, has to be dismissed. It is not necessary in such cases that an enquiry should be held in that suit and the decree for separate maintenance should be recorded as satisfied before it could be pleaded in defence in the subsequent suit for partition.

P. S. Balakrishna Ayyar and *P. S. Ramachandran*, for Appellant.

K. Kalyanasundaram, for Respondent.

R.M. —— *Appeal allowed: Leave granted.*

Rajagopala Ayyangar, J.
12th November, 1957.

Manickavasagam *v.* I.T.O. Coimbatore.
W.P. Nos. 886, etc., of 1956.

Income-tax Act (XI of 1922), *section* 35—*Scope of.*

The return of an assessee included the dividends received from a particular company declared for particular year of account of the company and the assessment order was based on that return. But during the same accounting year of the assessee he was deemed to have received another item of dividend from the same company. But there was no error in the assessment order in so far as the return submitted for that year.

Held that the non-inclusion of any item in a return leading to under-assessment could be rectified only by recourse to section 34 of the Income-tax Act and not to section 35 which is applicable only to cases of errors apparent from the record. Errors in assessment due to non-inclusion of income from an entire source or non-inclusion of certain items under a particular source are not errors rectifiable under section 35 of the Act. But where the original order of assessment was based on a particular assumption which is proved to be erroneous later it could be rectified by recourse to section 35 of the Act.

M. Subbaroya Ayyar, V. Sethuraman and *S. Padmanabhan* for Petitioner.

C. S. Rama Rao Sahib for Respondent.

R.M. —— *Orders accordingly.*

Ganapatia Pillai, J.
13th November, 1957.

Current Circulating Library *v.* Raja Veluggoti Yadandra.
C.R.P. No. 1486 of 1956.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *section* 7 (2) (*ii*) (*a*)—*Sub-letting by tenant without consent—What amounts to—Equitable mortgagee granting lease—Mortgagor owner—How far bound by the terms after redemption.*

An equitable mortgagee of a premises, with a right to let in tenants on the premises and collect the rents, will be a landlord within the meaning of the Madras Buildings Lease and Rent Control Act. Where a such a landlord grants a general written lawful permission to his tenant to sub-let the demised premises, the mortgagor owner who becomes the landlord after redemption of the mortgage will be bound by the terms of the prior lease. Where the owner mortgagor recognises the tenant and collects the rents, he must be deemed to have ratified the lease originally granted by the equitable mortgagee.

Quaere.—Whether the category of persons who are defined to be 'landlords' under section 2 (3) of the Act would be the same as the category of landlords indicated by section 7 of the Act for purposes of eviction in view of sub-section (7) of section 7?

(1949) 2 M.L.J. 597 : (1950) I M.L.J. 655, referred.

A valid written consent given by a landlord at the time the sub-letting took place will bind his successor.

K. Rajah Ayyar and *V. Seshadri* for Petitioner.

B. Lakshminarayana Reddi for Respondent.

R.M. —— *Petition allowed.*

Subramanyam, J.
15th November, 1957.

Nagammal *v.* Govindarajulu.
C.R.P. Nos. 525 etc. of 1957.

Madras City Tenants Protection Act (VI of 1921), *sections 7-A*, 8 *and* 9 *and Amending Act (XIX of* 1955), *section* 10 (1)—*Effect of amendment on decrees in ejectment which have not been executed—Tenant—When can take advantage of the Act—Rule of Limitation—Delay—If could be excused—Fair rent—When could be determined.*

It is no doubt true that the benefits of section 9 of the Madras City Tenants Protection Act as amended by Act XIX of 1955 has been made applicable to even cases of tenancy wherein a decree in ejectment has been passed, but has not been executed before the coming into force of the amending Act. But a tenant who seeks to take advantage of the amending provisions has to apply under section 9 of the Act within one month of the coming into force of the Amending Act for a direction that the landlord should sell the land to him. This is a rule of limitation which cannot be relieved against by the Court in the absence of any express provision in the Act.

An application for fixation of a reasonable rent under section 7-A of the Act can be made only by a tenant who has a right to continue in occupation of the land and not by a person against whom an order for eviction has been made.

K. Srinivasan and *K. Shanmugham* for Petitioner.

G. T. Ramanujachari for Respondent.

R.M. ——— *Orders accordingly.*

Rajagopala Ayyangar, J.
19th November, 1957.

Artisan Press *v.* I. T. O. Madras.
W.P. No. 28 of 1956.

Income-tax Act (XI of 1922), *section* 28—*Applicability—Initiation of proceedings for levy of penalty—What amounts to.*

To initiate means ' to originate or to take the first step ' A direction by the Income-tax Appellate Tribunal to the office to issue a notice to the assessee to show cause why a penalty under section 28 (1) (*c*) should not be levied is certainly a step in the proceedings for levy of a penalty under the section and the Tribunal will have jurisdiction to continue the proceedings even after the order under section 33 (4) of the Act has been made. The fact that the notice under section 28 (3) was actually dated and despatched at a subsequent date, after the date of the order under section 33 (4), does not affect the validity of the penalty proceedings, if they have been ' initiated ' at a time when the Tribunal was seized of the assessment proceedings, thus statisfying the requirements of section 28 (1) of the Act.

(1955) 2 M.L.J. 477, Referred.

G. R. Jagadisan and *T. V. Balakrishnan* for Petitioner.

C. S. Rama Rao Sahib for Respondent.

R.M. ——— *Petition dismissed.*

Ramaswami, J.
20th November, 1957.

Thangiah *v.*
Hanuman Bank (In Liquidation).
S.A. Nos. 425 to 454 of 1955.

Banking Companies Act (X of 1949), *sections* 45-*B and* 45-*C—Transfer of pending proceedings to High Court—Scope of.*

The expression ' relating to winding up ' in section 45-B of the Banking Companies Act is wide enough to cover even claims against the company which may not strictly be matters connected with the winding up and the word ' claims ' is also of exhaustive significance. Hence a claim of occupancy right made by a tenant against a Banking Company will be a matter relating to winding up and as such, the proceedings will stand transferred to the High Court under section 45-B of the Act.

(Scheme of Legislation explained—Power of Parliament to legislate considered—Case-law reviewed.)

G. R. Jagadisan and *A. R. Ramanathan* for Appellant.

G. N. Chari and *R. Srinivasan* for Respondent.

R.M. ——— *Appeals dismissed: Leave granted.*

Panchapakesa Ayyar and Ganapatia Pillai, JJ. *22nd November,* 1957.

Thangalaxmi *v.* Arunachalam. W.A. No. 96 of 1957.

Elections—Municipal Elections—Tribunals under—Power to allow further particulars.

Though an Election Tribunal created under the law relating to Elections has no inherent or common law powers, like a Court of law or equity and though there is no express statutory provisions in such cases as under the Representation of the People Act, 1951, still the power to allow amendment as under Order 6, rule 17, Civil Procedure Code, which is conferred on such Tribunals will include the power to allow an amendment by way of further particulars. The enumeration of certain provisions of Order 6, rule 17, is not exhaustive but is only illustrative.

Though the statutory provisions under the Representation of the People Act, 1951, relating to Parliamentary elections is not directly applicable to elections under the Municipalities Act, still the principles of that law may be applied to these cases also by analogy. In the absence of express statutory provision it is desirable to apply uniform rules to all elections regarding corrupt practices and irregularities.

(1956) I M.L.J. 40 and (1957) S.C.J. 297 Expl.

W.P. No. 74 of 1953 diff.

W.P. No. 893 of 1953 appl.

G. R. Jagadisan for Appellant.

S. Ramachandra Ayyar and *V. S. Ramakrishnan* for Respondent.

R.M. ——— *Appeal dismissed.*

Rajagopalan, O.C.J. and Rajagopala Ayyangar, J. *29th November,* 1957.

Abdul Kassim *v.* I.T.O., Karaikudi. W.P. No. 896 of 1956.

Income-tax Act (XI of 1922), *section* 46 (2)—*Scope of—Recovery of arrears of tax by issue of certificate to the Collector—If applicable to cases of recovery from legal representatives of an assessee.*

In order to attract the provisions of section 46 (2) of the Income-tax Act relating to recovery of tax due from an assessee through the Collector as an arrear of land revenue, two conditions must be satisfied, namely, (1) the amount must be in arrears and (2) the arrears must be due from an assessee. The recovery of the arrears under section 46 (2) of the Act is limited by the same considerations which would decide whether an assessee is in default within the meaning of section 46 (1) of the Act. A legal representative of a deceased assessee, it has been held, is not himself an assessee within the meaning of section 46 (1) of the Act and as such he cannot also be an assessee under section 46 (2). His liability to pay any tax due by the deceased assessee is limited by the possession of assets of the deceased. Hence the Income-tax Officer has no jurisdiction to issue a certificate under section 46 (2) of the Act for recovery of the tax from the legal representative treating him as the assessee.

(1956) 30 I.T.R. 286, referred.

(1956) 29 I.T.R. 708, followed.

M. R. M. Abdul Karim for Petitioner.

C. S. Rama Rao Sahib for Respondent.

R.M. ——— *Certificate set aside.*

Subrahmanyam, J.
29th November, 1957.

Nataraja Pillai and Co., *In re.*
C.R.P. No. 1638 of 1957.

Madras Buildings (Lease and Rent Control) Act (*XXV of* 1949), *section* 9—*Change of name of institution-landlord after an order of eviction is made—Execution of the order under the old name—Permissibility.*

An institution-landlord which has obtained an order of eviction against its tenant, though it subsequently changes its name merely, can continue the old proceedings in execution under the old name itself.

K. S. Ramamurthi and *T. R. Mani* for Petitioner.

R.M. ——— *Petition dismissed*

Panchapakesa Ayyar and Ganapatia Pillai, JJ.
29th November, 1957.

Changalvaroya Chetty *v.* State.
Appeal No. 137, etc., of 1954.

Madras Town Planning Act (*VII of* 1920), *section* 12—*Acquisition of land—Power of Government to extend the time fixed under—Effect of such extension—Quantum of compensation—Relevant date to decide.*

It is no doubt true that the State Government has the power to extend by notification the time originally fixed under section 12 of the Madras Town Planning Act for purposes of land acquisition as this is only a simpler form of issuing a fresh notification which power they undoubtedly possess. But if the Government resorts to any extension of the time originally fixed, then the market value of the property sought to be acquired has to be decided for purposes of ascertaining the compensation, as on the date of the last order of extension and not the date originally fixed.

A.S. No. 757 of 1950, followed.

I.L.R. 55 Mad. 391 and (1956) 2 M.L.J. 279, followed.

M. Natesan, V. N. Shama Rao, S. Padmanabhan, M. Ranganatha Sastri, M. V. Kapali, and *G. Ramanujam, Subramanian* and *Rajagopal* and *K. G. Manickavasagam* for Appellants.

The Government Pleader (*B. V. Viswanatha Ayyar*), *M. A. Sattar Sayeed, G. K. Raman and C. Rangaswami Ayyangar* for Respondents.

R.M. ——— *Cases remanded.*

Panchapakesa Ayyar and Ganapatia Pillai, JJ.
2nd December, 1957.

Ahmad Mohideen Khan, *In re.*
Crl. M. P's. Nos. 1103 & 1104 of 1957.

Criminal Procedure Code (*V of* 1898)—*Madras Amendment Act* (*XXXIV of* 1955)—*Creation of a Sessions Court for Madras—Validity of—Power of Madras Sessions Court to transfer cases from the Court of one Presidency Magistrate to another.*

The Code of Criminal Procedure (Madras Amendment) Act (XXXIV of 1955) is not *ultra vires* the powers of the State Legislature and the constitution of a separate Sessions Court for the city is valid. The Sessions Judge, Madras, can entertain transfer applications regarding cases pending on the file of the Presidency Magistrates.

F. S. Vas and *Messrs. Jan and San* for Petitioner in Cr.M.P. No. 1103 of 1957.

T. M. Kasturi and *Messrs. Jan and San* for Petitioner in Cr.M.P. No. 1104 of 1957.

The Advocate-General (*V. K. Tiruvenkatachari*) and the Public Prosecutor (*P. S. Kailasam*) for Respondents in both.

R.M. ——— *Petition dismissed.*

Ramaswami, J. Narasimhalu Chettiar *v.* Muthuswami Gounder.
4th December, 1957. C.R.P. No. 1328 of 1957.

Madras Cultivating Tenants Protection Act (*XXV of* 1955)—*Scheme of the Statute —Suit for arrears of rent in civil Court against tenant within the meaning of the Act—When could lie—Power of civil Court to appoint receiver—Scope of.*

Under the scheme of the Madras Cultivating Tenants Protection Act, 1955, the Revenue Court is vested with the jurisdiction to decide whether a tenant is liable to be evicted from his holding on the ground of failure to pay the arrears of rent. This necessarily means that the Court should first decide whether there is any arrear of rent. When once the Revenue Court decides that there are no arrears it is not open to the landlord to reagitate the matter in a civil Court by a suit for recovery of the alleged arrears of rent. It is of course open to the landlord to file a regular suit in a civil Court in respect of arrears not covered by the Act or in respect of arrears which have been found due by the Revenue Court in the suits or proceedings and which the tenant has failed to pay.

But even in cases where a decree for arrears of rent is obtained by the landlord in a civil Court, the only mode of execution open to the landlord is to apply for attachment of moveables, etc., under the Code of Civil Procedure and not to evict the tenant, if he is otherwise entitled to the protection under the Madras Act XXV of 1955. Even though on principle a receiver may be appointed in such suits the receiver will have no powers to dispossess the cultivating tenant contrary to the provisions of the said Act XXV of 1955.

S. Ramachandra Ayyar and *V. S. Ramakrishna* for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), *S. Mohan Kumaranamagajam*, *S. Mohan* and *M. Krishna Bharathi* for Respondents.

R.M. ——— *Orders accordingly.*

Rajagopala Ayyangar, J. Asher Textiles, *v.* Industrial Tribunal, Coimbatore.
4th December, 1957. W.P. No. 1246 of 1956.

Industrial Disputes Act (*XIV of* 1947), *section* 33—*Petition by employer seeking permission to punish a workman for misconduct pending arbitration—Duty of Tribunal—Employer stating the nature of punishment proposed to be imposed, if irregular—Petition if liable to be rejected on that ground.*

A petition by the employer to an Industrial Tribunal under section 33 of the Industrial Disputes Act, seeking permission to dismiss a workman pending adjudication, cannot be rejected merely because the employer sought the permission of the tribunal to impose a specific form of punishment, *viz.*, dismissal, instead of generally seeking a permission to punish. On the other hand the section itself contemplates that the management in seeking a permission to punish should state the action they propose to take against the workman, so that the tribunal could consider whether the permission sought for is *bona fide*.

It is no doubt true that it is not within the competence of a tribunal to impose any conditions in granting a permission under section 33 of the Act nor could it substitute a punishment which it considers appropriate. But the severity of the proposed punishment in the context of other facts, might enable a tribunal to draw its own conclusion about the motive of the employer in seeking the permission. Where permission to dismiss a workman is sought on the ground of misconduct and disobedience of lawful orders, and the tribunal finds that the alleged misconduct is proved, it has no jurisdiction to refuse the permission merely because in its opinion the punishment proposed was more severe than what it would have inflicted.

T. T. Srinivasan and *A. N. Rangaswami* for Petitioner.

The Additional Government Pleader (*K. Veeraswami*) and *B. Laxminarayana Reddi* for Respondent.

R.M. ——— *Petition allowed.*

Ramaswami, J. Madurai Municipality *v.* Rangaswami.
5th December, 1957. S.A. No. 423 of 1955.

Madras District Municipalities Act (V of 1920), *Schedule V, clauses (n) and (q)—Cinder—If coal or combustible or explosive material.*

Cinders cannot be considered as coal nor can it be said to be either a combustible or explosive material. As such cinders will not fall within the items enumerated in either clause (*n*) or clause (*q*) of Schedule V of the Madras District Municipalities Act, the storing or selling of which requires a licence.

L.R. (1891) 1 Q.B. 790 and (1942) 2 M.L.J. 555, followed.

K. Veeraswami for Appellant.

K. V. Srinivasa Ayyar and *S. Sundaram* for Respondent.

R.M. ——— *Appeal dismissed.*

Rajagopalan, O.C.J., Rajagopala Ayyangar, J. Gemini Pictures Circuit, *v.* C.I.T.
6th December, 1957. W.P. No. 925 of 1955 and R.C. No. 27 of 1955.

Income-tax Act (XI of 1922), *section* 13—*Method of accounting regularly employed—Duty of officer to accept in computing profits—Film industry—Amortisation of the cost of production—Depreciation value calculated at specified percentages for each year on a sliding scale—Adoption of a time basis—Legality—Circulars of C.B.R. D.O.R. Dis. No.* 178—*I.T.* 137, *dated* 13*th May,* 1937 *and C. No.* 9 (48)—*I.T.* 48,*dated 4th January,* 1951—*Construction of.*

Where an assessee, a film distributor, was adopting regularly a method of accounting by which he valued his closing stock at the end of each year of his accounts by deducting sepecified percentage of the cost of production towards depreciation (as per the departmental circular issued in that regard) it should normally be accepted by the assessing authorities under section 13 of the Income-tax Act. But the proviso to the section enables the authorities to disregard the method adopted by the assessee, if they are satisfied that the income, profits or gains cannot be properly ascertained in the method of accounting adopted by the assessee. His power can be exercised, not only by the Income-tax Officer in the first instance but also by the Appellate Assistant Commissioner at the stage of appeal.

The departmental circular of the year 1937 no doubt provides for a method of allowing a particular percentage of depreciation on a film taking roughly three years to be the normal life of a film from the standpoint of earning income. But the year contemplated by the circular normally should mean a period of 365 days and not an artificial year, long or short, like the accounting year. Where a film was released for exhibition only a few days prior to the closing of an accounting year of the assessee, it is not open to the assessee to claim the full deductionof 60 per cent. for the first year for purposes of depreciation, as provided in the circular.

It does not, however, mean that when once the method of accounting adopted by the assessee is rejected under the proviso to section 13, the authorities are free to adopt any method they like. The method adopted should be such that it can enable the ascertainment of the true profits of the business. A strict adherence to the 'time rule' indicated in the departmental circular of 1951 for purposes of allowing depreciation will not also help in ascertaining the true profits. It is only an average percentage of the total allowed for a period of twelve months that should be taken into consideration. Any computation of the amortisation rate of a film must take into account the actual collections from the film for the period of its normal life (*viz.*) three years as generally understood, and allow the percentages of depreciation for each period on the total revenue of the film for the period of three years.

(Actual process of arriving at the figure on the basis of the departmental circulars explained—Advantages and disadvantages discussed—Principles indicated.)

R. M. Seshadri and *R. Narayanan* for Petitioner.

Ct S. Rama Rao Sahib for Respondent.

R.M. ——— *Answers accordingly.*

Ramaswami, J. Alagammai Achi, *In re.*
6th December, 1957. S.R. No. 17869 of 1957.

Practice—Appeal—Limitation for—Computation of time—Decree amended—When gives rise to a fresh starting point of limitation—Limitation Act (IX of 1908), *Article* 156.

Though it is an accepted principle of law that time for purposes of appeal against the decree of a Court which is amended subsequently runs from the date of the amendment, it is not every case of amendment that could give a fresh starting point for limitation. In order to take advantage of the extended period of limitation from the date of the amendment it should be established that the amendment has brought about a substantial change in the relief orginally granted. Where a decree of a particular date is amended subsequently only as regards costs, and an appeal sought to be filed against the said decree seeks to question only the decree as it originally stood and not the question of costs, which was the subject-matter of the amendment, the time for purposes of limitation for the appeal has to be computed only from the date of the original decree and not from the date of the amendment as the subsequent amendment has no relation to the grounds on which the decree is challenged.

Case-law referred.

Per curiam: It may be open to a party in such cases to apply under section 5 of the Limitation Act.

S. Ramachandran and *V. S. Ramakrishnan* for Appellant.

The Government Pleader (*B. V. Viswanatha Ayyar*) for the State.

R.M. *Orders accordingly.*

Ramaswami, J. Parthasarathy Naicker, *In re.*
9th December, 1957. S.R. No. 32806 of 1957.

Practice—Order of a Civil Court granting sanction to prosecute for perjury—Appealable—If revision lies to the High Court—Civil Procedure Code (V of 1908), *section* 115—*Jurisdiction under—If could be invoked where an appeal lies.*

It is well settled law that the High Court cannot entertain a revision under section 115, Civil Procedure Code, in cases in which an appeal lies from an order of the lower Court. An order of a Civil Court granting sanction to prosecute or refusing to grant the permission sought for under section 476 of the Code of Civil Procedure is expressly made appealable under section 476-B of the Code. Hence in such cases only a Civil Miscellaneous Appeal could lie to the Court to which the Court making the order is subordinate and a revision cannot be filed directly in the High Court under section 115, Civil Procedure Code, without exhausting the remedy of an appeal to the lower appellate Court.

99 I.C. 957, followed.

O. Radhakrishnan for Appellant.

R.M. *Orders accordingly.*

Somasundaram, J. Raman *v.* Public Prosecutor.
10th December, 1957.

Cr. R.C. No. 141 of 1957 and
Cr. Appeal No. 263 of 1957.

Cattle Trespass Act (I of 1871), *sections* 11 *and* 24—*Applicability to trespass on reserved forest land.*

Criminal trial—Practice—Excusing delay in filing appeal against acquittal—Right of the accused to contest.

Though in terms of the section, section 11 of the Cattle Tresspass Act cannot apply to cases of trespass on Reserved forest land, the provisions of the said section are attracted to such cases by virtue of section 57 of the Madras Forest Act and as such an accused can be convicted under section 24 of the Cattle Trespass Act for allowing cattle to trespass on Reserved forest land.

Normally in criminal cases any delay in filing an appeal cannot be excused without notice to the respondent as be cannot he deprived of the valuable right

which he has acquired by the expiry of the period of limitation. But in cases where the delay is excused without notice to the other side, it is open to the respondent at the time of the final hearing to raise the question of delay and show that there was no justifiable ground to excuse the same.

The mere fact that an appeal against an acquittal was sought to be filed after the expiry of the period of limitation as a result of the attention of the Public Prosecutor being drawn to the matter in Court in a connected proceeding, is no ground by itself to excuse the delay.

G. Gopalaswami and *V. Gopinathan* for Petitioner in Cr.R.C. No. 141 of 1957 and Respondent in Cr. App. 263 of 1957.

The Public Prosecutor (*P. S. Kailasam*) for Respondent in Cr.R.C. 141 of 1957 and Appellant in Cr. Appeal No. 263 of 1957

Rajabathar for Complainant in Cr. R.C. No. 141 of 1957.

R.M. —— *Both appeal and revision dismissed.*

Somasundaram, J.
12th December, 1957.

Public Prosecutor *v.* Anthony
Cr. Appl. No. 393 of 1957.

Opium Act (I of 1878), section 14—Search of a premises after sun set which is prohibited by the section—If affects the legality of the seizure and trial.

It is no doubt true that section 14 of the Opium Act expressly prohibits search of a premises after sun set and hence any search in contravention of the section will be illegal. But the fact that the search was illegal will not vitiate a conviction for the offence nor can the articles recovered in pursuance of such a search be said to have been not recovered at all. The illegality of the search will only affect the weight to be attached to the evidence, which will be examined very carefully and cautiously by the Court before it is accepted. It cannot vitiate the subsequent proceedings in Court nor can a conviction be set aside solely on that ground.

A.I.R. 1950 All. 436 : A.I.R. 1956 Bom. 528 : A.I.R. 1956 S.C. 411 referred.

The Public Prosecutor (*P. S. Kailasam*) for Appellant.

S. Thirumalai for Respondent.

R.M. —— *Acquittal set aside.*

Ramaswami, J.
12th December, 1957.

Fathima Bi.-*Appellant.*
S.R. No. 34348 of 1957.

Practice—Judgment and decree of lower Court bearing different dates—Appeal against—Maintainability—Procedure to be adopted by the appellant—Civil Procedure Code (V of 1908), *Order* 20, *rule* 7*—Provisions if mandatory.*

The provisions of Order 20, rule 7, Code of Civil Procedure, enjoining that a decree of Court should bear the same date as the judgment, even though it is drawn up and signed at a later date, is mandatory. Hence where the decree and judgment of the lower Court bears different dates, the party seeking to file an appeal against the same has only to apply to the said Court to have the date of the decree brought in conformity with the date of the judgment. An appeal cannot be filed without such rectification.

(Case-law referred)

S. K. Ahmed Meeran and *M. Khaja Mohideen* for Appellant.

R.M. —— *Orders accordingly.*

Rajagopala Ayyangar, J.
16th December, 1957.

Ghazani Md. Sahib *v.* Official Receiver.
C.R.P. Nos. 538 and 539 of 1957.

Madras Cultivating Tenants Protection Act (XXV of 1955), *section* 3 *and Provincial Insolvency Act (V of* 1920), *section* 55*—Eviction of tenant on the ground of arrears of rent—Original landlord adjudged insolvent—Leased lands vesting in Official Receiver—Payments made* bona fide *to the former landlord—If binding on Official Receiver—Scope of.*

Where a cultivating tenant entered into a registered lease for a period of 5 years with his landlord and paid an advance which was to be adjusted in parts according to the terms and conditions of the contract of lease, on the adjudication of the landlord subsequently as insolvent, the Official Receiver will be equally bound by the terms of the lease. Any adjustment of payment made by the tenant, even though it is after the date of the presentation of the petition for adjudication, will also be binding and valid unless it is shown that the payment or adjustments were made after the tenant had actual knowledge of the insolvency proceedings within the meaning of section 55 of the Provincial Insolvency Act. A constructive knowledge or notice under section 19 of the Act by virtue of a Gazette notification intended for creditors of the insolvent, is not enough to take away the protection afforded under section 55 to *bona fide* payments.

D. Ramaswami Ayyangar and *P. R. Varadarajan* for Petitioner.

K. S. Ramamurthi and *T. R. Mani* for Respondent.

R.M. ——— *Petition allowed.*

Ramaswami, J.
30th December, 1957.

J.C. Mary, *In re.*
Crl.R.C. No. 872 of 1957
(Crl.R.P. No. 849 of 1957).

Motor Vehicles Act (*IV of* 1939), *section* 116 *and Madras City Police Act* (*III of* 1888), *section* 71—*Rash and negligent driving—Liability for penalty and damages—Speed—When dangerous.*

Culpable negligence in the driving of a motor vehicle giving rise to penalties in prosecution and damages in civil suits may be due to negligent driving, rash driving and errors in judgment. Rash or negligent driving will be punishable under section 116 of the Motor Vehicles Act and if the driving is in any public place, under section 71 of the Madras City Police Act also. Mere errors of judgment in driving might give rise to civil liability, but are not punishable criminally.

For an offence under section 116 of the Motor Vehicles Act, the ingredients of speed and manner of driving have to be looked into. 'Speed' to be considered dangerous depends on several factors and varies with the nature of the road, quantum of traffic, actual and anticipated, etc. Though the law does not set a precise limit on the speed with which a motor vehicle can be driven, still speed is dangerous and in a legal sense it is negligence in a great number of cases. Where it is not safe to go at more than a foot pace a driver must go at a foot pace and if even that is unsafe, he must stop. Except in cases of emergencies creating unexpected hazards, a driver is expected to drive an automobile at such a rate of speed as would enable him to stop it in time to avoid a collision discernible ahead.

(Rashness and negligence distinguished—Reasonable foresight explained Culpable negligence to render a person liable criminally—Scope explained—Case-law referred.)

B. T. Sundararajan and *S. V. B. Row* for Petitioner.

The Public Prosecutor (*P. S. Kailasam*) on behalf of the State.

R.M. ——— *Petition dismissed.*

Balakrishna Ayyar, J.
8th January, 1958.

Kunchithapatham *v.*
Ranganadham.
C.R.P. No. 1218 of 1957.

Madras Cultivating Tenants Protection Act (*XXV of* 1955), *section* 2 (*a*)—*Cultivating tenant— Who is.*

A 'cultivating tenant' within the meaning of section 2 (*a*) of the Madras Cultivating Tenants Protection Act, 1955, need not necessarily do physical labour in respect of the cultivation work. Even a person who assumes the risk of the cultivation and directly supervises the work of cultivation such as deciding the cropping time schedule, nature of the crop and manure, quantum of labour to be employed, disposal of the produce, etc., will be a cultivating tenant under the Act.

K. N. Subramanian for Petitioner.

M. Srinivasagopalan for Respondent.

R.M. ——— *Petition dismissed.*

Rajagopala Ayyangar, J.
25th November, 1957.

Palaniappa Chettiar and Co. *v.*
The Dy. Commercial Tax Officer.
W.P. No. 1279 of 1956, etc.

Madras General Sales Tax Act (IX of 1939, *as amended by Amendment Act XVIII of* 1955), *sections* 3 *and* 5—*Madras General Sales Tax (Turnover and Assessment) Rules,* 1939, (*as amended in* 1955), *Rules* 15 *and* 16—*Scope—If invalid and* ultra vires, *as being "law imposing a tax"—Absence of sanction of President—Effect—Constitution of India* (1950), *Article* 286 (3)—*Essential Goods (Declaration and Regulation of Tax on Sale or purchase) Act (LII of* 1952), *section* 3—"*Law imposing or authorising the imposition of a tax*"—*Interpretation of—Rules framed under enactment—Machinery for assessment and collection of tax, if law imposing tax—Tests to determine.*

New Rules 15 and 16 of the Madras General Sales Tax (Turnover and Assessment) Rules, which became law on their publication in the Gazette on 7th September, 1955, must be held to be subordinate legislation whose subject-matter is the prescription regarding assessment and collection of taxes "imposed" by sections 3 and 5 of the Madras General Sales Tax Act and, though without their existence, it would not be possible to levy or collect the tax, they are not in themselves "laws imposing the tax" within Article 286 (3) of the Constitution or section 3 of the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act of 1952—The rules in question are only machinery provisions, but the fact that without the machinery enactment (which are no doubt vital) the taxes may be incapable of being levied or collected would not make them "a law imposing the tax". It is the essential nature of the provisions that has to be considered in deciding whether they are a law "imposing the tax"—their primary or subordinate place in the scheme of the enactment. Rules 15 and 16 cannot therefore be held illegal, inoperative or *ultra vires* on the ground that the sanction of the President has not been obtained as required by Article 286 (3) of the Constitution or section 3 of Act LII of 1952.

Subordinate legislation in the sense of a rule made under an enactment may be a "law" within Article 286 (3) and section 3 of Act LII of 1952. The absence of a specific reference to rules in Articles 286 (3) does not lead to the conclusion that if a Sales Tax Act left the fixation of the rate of levy to a rule, the rule determining the rate would be a "law imposing the tax", which is required to be reserved for the President's sanction before it could be valid or operative under Article 286 (5)—such a rule would be a "law imposing the tax", because the rate of tax is such an essential constituent part of tax legislation that it would be impossible to take them out of the category of a law imposing a tax.

It is not however, every law which has something to do with taxation that can be said to be a law which "imposes" a tax. A distinction has to be drawn between a provision in an enactment which defines the subject-matter of the tax and fixes the rate and one which provides for collection, recovery, exemption, refunds, penalties and other necessary incidents in any scheme of taxation.

12 C.L.R. 321 ; 38 C.L.R. 153 ; 70 C.L.R. 362, applied and followed.

6 S.T.C. 352 ; 7 S.T.C. 792, distinguished and explained.

3 S.T.C. 392 and 5 S.T.C. 108, referred to

M. K. Nambiyar for *Messrs. Soundararajan and Sivaswami, T. T. Srinivasan* and *A. N. Rangaswami* for Petitioners.

The Advocate-General (*V. K. Thiruvenkatachari*) and The Additional Government Pleader (*K. Veeraswami*) for Respondents.

P.R.N.

Petitions dismissed.
Rule nisi discharged.

M—NRC

Ramaswami, J.
29th November, 1957.

Maragathammal *v.* Dharma Goundan.
S.A. No. 726 of 1955.

Transfer of Property Act (IV of 1882), *section* 39—*Applicability.*

Under section 39 of the Transfer of Property Act as amended in 1929, a notice of the existence of the right of maintenance of a third party is enough to bind the transferee and it is not further necessary to show that the transferee had knowledge of the intention of the transferor to defeat the maintenance rights.

(1956) 2 An. W.R. 1021, followed.

(1947) 1 M.L.J. 329, Dissented.

T. V. Balakrishnan for Appellant.

T. L. Nagaraja Rao for Respondent.

R.M. *Appeal allowed.*

Balakrishna Ayyar, J.
15th November, 1957.

State of Madras by Collector of Tanjore and others.
S.A. No. 874 of 1957.

Madras General Sales Tax Act (*IX of* 1939), *section* 17 (2)—*Applicability—Protection under—If applies to reckless acts of officers.*

Section 17 (2) of the Madras General Sales Tax Act, 1939, is intended to protect only cases like officers acting under the Act under an erroneous view of the law or where officers proceed on the belief that certain facts exist but later on it turns out that the facts are different. The section cannot be invoked in cases of reckless exercise of authority when there is a total want of *bona fides*.

Where the Collector and the Sales Tax Department illegally attaches the private property of the President of an Association registered under the Societies Registration Act, for recovery of tax due by the society the attachment is illegal and would give rise to a claim for damages.

The Government Pleader (*B. V. Viswanatha Ayyar*), for Appellant.

R.M. — *Appeal dismissed.*

Rajagopalan, O. C. J. and Rajagopala Ayyangar, J.
13th December, 1957.

Mararji *v.* Nallayya.
R.C. No. 14 of 1956.

Civil Procedure Code (*V of* 1908), *section* 113—*Reference to High Court—Duty of subordinate Court.*

A reference under section 113 of the Code of Civil Procedure by a subordinate Court to the High Court on the question of the validity of an Act or Ordinance could be made only if the Court records its *prima facie* finding that the impugned Act or Ordinance is invalid. Otherwise the reference will be incompetent.

T. K. Subba-Rao, for Petitioner.

The Advocate-General (*V. K. Thiruvenkatachari*) and *B. Rathnasabapathi*, for Respondent.

R.M. — *Reference discharged.*

Panchapakesa Ayyar, J.
20th December, 1957.

Syed Sahib *v.* Angamuthu Mooppan.
C.R.P. No. 1273 of 1957.

Madras Cultivating Tenants Protection Act (*XXV of* 1955 *and XIV of* 1956), *section* 6-A—*Transfer of pending proceedings before Civil Courts to Revenue Court—Nature of finding of Civil Courts—Procedure.*

It is no doubt true that under section 6-A of the Madras Cultivating Tenants Protection Act certain proceedings between landlords and tenants of agricultural land pending before a Civil Court has to be transferred to the Revenue Court after the coming into force of the said Act, if the Civil Court finds that the defendant against whom the proceedings are taken is a cultivating tenant entitled to the benefits of the Act. But this finding by a Civil Court is only a *prima facie* finding and is not final and binding on the Revenue Court.

A suit for an injunction by a landlord against another who claims to be entitled to possession of certain lands in dispute as lessee, when transferred to the Revenue Court under section 6-A of the Act will automatically become a petition by the tenant for restoration to possession of the land and there is no need to file a separate petition for that purpose before the Revenue Court. The legal fiction enacted in section 6-A provides that the Revenue Court shall dispose of the transferred proceedings as though it were an application under Act XIV of 1956. The period of limitation of two months from the coming into force of the Act for filing applications cannot operate in such cases as the date of the filing of the suit will be the date for purposes of the claim before the Revenue Court on transfer.

S. Ramachandra Ayyar and *P. S. Srisailam*, for Petitioner.

A. V. Narayanaswami Ayyar, for Respondent.

R.M. — *Petition dismissed.*

Ramaswami, J.
30th December, 1957.

Chidambaram *v.* Rathinam.
C.R.P. No. 1739 of 1957.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *section* 7 (3) (*a*) (*i*) *and* (*iii*)—*Landlord requiring building* bona fide *for his own occupation—Building residential and non-residential —Application when could lie.*

Where a building, though let out in parts, constitutes one unit and is essentially a residential building and it is not shown that any particular portion of it was let out specifically for non-residential purposes, the mere fact that a petty shop was being run in a portion of the building will not convert the building or any part of it into non-residential building. Where a landlord requires a building both for his residential and non-residential purposes he can ask for eviction of his tenant in occupation of the respective portions.

D. Ramaswamy Ayyangar and *O. K. Ramalingam*, for Petitioner.

T. V. Balakrishnan, for Respondent.

R.M. ——— *Petitions. dismissed.*

Somasundaram, J.
6th January, 1958.

Gorilan, *In re* :
Cr.R.C. No. 445 of 1957 and
Case Ref. No. 7 of 1957.

Motor Vehicles Act (*IV of* 1939), *section* 130 (1) *and Penal Code,* (*XLV of* 1860) *section* 279—*Prosecution for an offence of rash and negligent driving under section* 279, *Penal Code—If could be proceeded under section* 130 (1) *of the Motor Vehicles Act.*

Section 130 (1) of the Motor Vehicles Act provides for a particular manner of disposal of certain prosecutions under the Act (*viz.*) by the accused pleading guilty and remitting the fine indicated in the summons. But this provision cannot apply to prosecutions for rash and negligent driving under section 279, Indian Penal Code. Section 130 (1) of the Motor Vehicles Act can apply only to cases where an offence is committed under that Act and the offence is not one falling under Part A of Schedule V of that Act.

The Public Prosecutor (*P. S. Kailasam*), for the State.

S. V. Rama Ayyangar, for Accused.

R.M. ——— *Order set aside.*

Somasundaram, J.
10th January, 1958.

Jagannathan, *In re.*
Crl.R.C. No. 621 of 1957.
(Crl. R.P. No. 606 of 1957.)

Railways Act (*IX of* 1890), *section* 121—*Offence under—Refusal of a passenger to show the ticket when demanded—If amounts to impeding a railway servant in the discharge of his duty.*

Railway Mobile Court—Procedure to be adopted by Honorary Magistrates—Examination of accused under section 342, *Criminal Procedure Code* (*V of* 1898)—*Necessity for.*

The refusal by a passenger alighting from a train to show his ticket when demanded by the railway servant will certainly impede the railway servant in the discharge of his duty and will amount to an offence under section 121 of the Railways Act.

In cases tried by Mobile Railway Courts, the Honorary Magistrates should follow the elementary principle of criminal procedure of questioning the accused also, after the evidence against him is recorded, with regard to the circumstances that appear against him. Otherwise the whole proceedings will be vitiated.

C. K. Venkatanarasimhan and *S. N. Rajan*, for Petitioner.

The Public Prosecutor (*P. S. Kailasam*), for the State.

R.M. ——— *Conviction set aside.*

Somasundaram, J.
17th January, 1958.

Govindaswami, *In re* :
Crl.R.C. No. 555 of 1957.
(Crl.R.P. No. 542 of 1957.)

Criminal Procedure Code (*V of* 1898), *section* 537 *as amended by Criminal Procedure Code* (*Amendment*) *Act* (*XXVI of* 1955)—*Misjoinder of charges—Whether vitiates a trial.*

Though under the Code of Criminal Procedure, as it stood before the recent amendment, a misjoinder of charges was an illegality and would vitiate the trial, in view of the recent amendment of section 537 of the Code, an error in a charge including misjoinder does not vitiate the trial unless prejudice is shown.

Petitioner not represented.

The Public Prosecutor (*P. S. Kailasam*) for the State.

R.M. *Petition dismissed.*

Balakrishna Ayyar, J.
21st January, 1958.

Kuppuswami *v.* Sri Subramaniaswami Devasthanam.
C.R.P. No. 1490 of 1957.

Madras Cultivating Tenants Protection Act (*XXV of* 1955), *section* 6-*A—Transfer of suits by Civil Court to Revenue Court—When could be made—Cultivating tenant entitled to the benefits of the Act—Scope of.*

It is no doubt true that section 6-A of the Madras Cultivating Tenants Protection Act, 1955, as amended by Act XIV of 1956 provides for transfer of certain suits from Civil Courts to the Revenue Courts established under the Act. But having regard to the scheme of the Act and the language of the section before a Civil Court can transfer a proceeding under section 6-A of the Act, it must be satisfied that the tenant is not only a cultivating tenant as defined by the Act; he should also be entitled to some benefit or other under the Act. If both these conditions are not satisfied, no question of any transfer under section 6-A of the Act will arise. It may be that in coming to a conclusion whether a suit has to be transferred or not the Civil Court may have to determine certain questions which are exclusively within the jurisdiction of the Revenue Courts under the Act. But this cannot affect the interpretation of the specific words of the section *viz.*, "cultivating tenants entitled to the benefits of the Act."

Quaere : Since the word 'benefits of the Act' is used in plural, whether it is necessary that the tenant should be entitled to all the benefits of the Act before he could seek a transfer under section 6-A ?

G. R. Jagadisan and *T. S. Srinivasan* for Petitioner.

R. Gopalaswami Ayyangar, *R. Pitchai* and *K. Natarajan* for Respondent.

R.M. *Order accordingly.*

Somasundaram, J.
21st January, 1958.

Monjee Gopaljee, *In re.*
Crl. R. C. No. 542 of 1957.
(Crl. R. P. No. 529 of 1957).

Madras Cotton Control Order, (1950) *and Ordinance* (*I of* 1955) *and Madras Cotton Control Order*, (1955)—*Carrying on business in raw cotton without license—If an offence during the period when Ordinance was in force.*

Though under the Madras Cotton Control Order, 1950 issued under the Essential Supplies (Temporary Powers) Act, 1946 which expired by efflux of time on 26th January, 1955, trading in raw cotton without licence was a punishable offence, the Central Ordinance I of 1955, either by oversight or otherwise did not include transactions relating to raw cotton among the punishable offences. The subsequent Essential Commodities Act X of 1955 and the Madras Cotton Control Act, 1955 issued under it, no doubt included raw cotton. But this came into force only on 13th July, 1955. Hence no prosecution can be launched for trading in

raw cotton before the coming into force of the Madras Cotton Control Order, 1955 and after the expiry of the order of 1950. Clause 16 of the Ordinance I of 1955 cannot apply to such cases to save any prosecution.

T. R. Ramachandran, for Petitioner.

The Public Prosecutor (*P. S. Kailasam*) for the State.

R.M. *Conviction set aside.*

Somasundaram, J.
22nd January, 1958.

Govindan, *In re.*
Crl. R. C. No. 570 of 1957.
Taken up No. 6 of 1957 and another.

Criminal Law—Practice—Payment of compensation to the accused out of fine imposed on another accused—Legality.

When two accused persons are found guilty for the same offence and one is fined and the other is admonished and released, the Court has no jurisdiction in such cases to order payment of compensation to one of the accused out of the fine imposed on the other accused. The Code of Criminal Procedure does not contemplate giving of compensation by one accused to the other accused.

B. Lakshminarayana Reddy, for first Accused.

The Public Prosecutor (*P. S. Kailasam*) for the State.

R.M. *Order set aside.*

Panchapakesa Ayyar and
Basheer Ahmed Sayeed, JJ.
27th January, 1958.

Somasundaram *v.* Gopal.
Crl. R. C. No. 680 of 1957.
(Crl. R. P. No. 663 of 1957).

Criminal Procedure Code (V of 1898), section 204 (1-A)—Right of a complainant, in a private complaint, to file additional list of witnesses or vary the original list filed—Procedure.

It is not doubt true that section 203 (1-A) of the Code of Criminal Procedure, as amended recently, provides that no summons or warrant shall be issued against an accused under section 204 (1) until a list of prosecution witnesses has been filed. But it does not prohibit any variation of the list. Of course the list of witnesses required to be filed would be a *bona fide* complete list of witnesses so far known or considered by the complainant as necessary for his case. It cannot be a mere nominal list. But in addition to the list initially filed under section 204 (1-A) a complainant can file supplemental lists of witnesses. It is also equally open to a complainant to give up some of the witnesses included in his original list. But in such cases it is open to the Court to draw any inference against him if the giving up is *mala fide*. Even so the credibility of the evidence of witnesses named in the supplemental list is a matter for the Court to consider and a Court may test the evidence of the supplemental witnesses with greater scrutiny. When the Magistrate is asked to summon fresh witnesses it is open to him, and it is his duty, to apply his mind to it and decide whether the witnesses are necessary. Till he decides to summon the fresh witnesses mentioned, no notice of it need go to the accused.

K. Arunachala Sastri, for Petitioner.

The Public Prosecutor (*P. S. Kailasam*) for the State.

Rangavajjulu Krishnamurthy for Accused 1 and 2.

R.M. *Orders accordingly.*

[SUPREME COURT.]

S. R. Das, C.J., T. L. Venkatarama Aiyar, S. K. Das, A. K. Sarkar and Vivian Bose, JJ.
22nd January, 1958.

Raja Ganga Pratap Singh *v.* The Allahabad Bank, Ltd.
C.A. No. 357 of 1957.

U. P. Zamindar's Debt Reduction Act, 1951, *section* 2 *(f)—Articles* 14 *and* 228 *of the Constitution of India* (1950)—*Civil Procedure Code* (*V of* 1908), *section* 113, *proviso—Scope—Definition of* " *debt* ".

" It seems clear to us that the question raised by appellant comes within the proviso to section 113, Civil Procedure Code as also Article 228 of the Constitution. The Courts below held that in either view of the question of the validity of the impugned portion of the definition of a " debt " appellant would be without the remedy which he sought because that portion of the definition was not severable from the rest and therefore it was not necessary to decide that question to dispose of the case. We are unable to agree with this view. The question of the validity of the definition in so far as it excluded certain debts had to be decided by the Court. The question as to the severability of the impugned part of the definition from the rest would arise only after it had been decided that the impugned part was invalid ".

Mohd. Iqbal, for Appellant.

Vidya Sagar, for Respondent.

G.R.

Appeal allowed and remanded.

[SUPREME COURT.]

S. R. Das, C.J., S. K. Das and A. K. Sarkar, JJ.
4th February, 1958.

Workmen of Dimakuchi Tea Estate *v.* Dimakuchi Tea Estate.
C.A. No. 297 of 1956.

Industrial Disputes Act (*XIV of* 1947), *section* 2(k)—" *Industrial dispute* "—*Test.*

The majority judgment prescribed two tests to determine whether a dispute pertaining to a person who is not a workman is an " industrial dispute " within the meaning of section 2(*k*) of the Industrial Disputes Act, 1947. They are : (1) the dispute must be a real dispute between the parties to the dispute so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other ; and (2) the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment or conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest.

Mr. Justice Sarkar in his dissenting judgment held that a dispute concerning a person who was not a workman could be an industrial dispute within the meaning of section 2 (*k*). " I would not make interest of the workmen in the dispute a condition of the existence of an industrial dispute. The Act does not do so. It would be impossible to define such interest and such a condition would defeat the object of the Act."

" It is not for the Court to lay down rigid principles of interest which interfere with the Government's discretion for that might defeat the object of the Act. It is not necessary to say that a dispute is an industrial dispute only when the workmen are interested in it. Such a test would make it justiciable by Courts and also introduce a rigidity in the application of the Act which is incompatible with the fast changing concepts it has in view and so defeat the object of the Act ".

C. B. Aggarwala, for Appellant.

Purshotamdas Tricumdas, for Respondent.

G.R.

Appeal dismissed.

[SUPREME COURT.]

N. H. Bhagwati, J. L. Kapur and P. B. Gajendragadkar, JJ.
7th February, 1958.

Talab Haji Husain *v.* M. P. Mondkar and another.
Cr. A. No. 16 of 1958.

Criminal Procedure Code (V of 1898), *sections* 561-A *and* 496—*Scope—Inherent powers of the High Court—Limits.*

" The inherent power conferred on High Courts under section 561-A has to be exercised sparingly, carefully and with caution and only where such exercise is justified by the tests specifically laid down in the section itself."

" After all, procedure, whether criminal or civil, must serve the higher purpose of justice ; and it is only when the ends of justice are put in jeopardy by the conduct of accused that the inherent power can and should be exercised in cases like the present ".

" A close examination of provisions of section 496 would show that there is no conflict between its provision and the exercise of the jurisdiction under section 561-A. If the power under section 561-A is exercised by the High Court, the bail offered by accused and accepted by the trial Court would be cancelled and accused would be ordered to be arrested forthwith and committed to custody. Where a person is committed to custody under such an order, it would not be open to him to fall back upon his rights under section 496, for section 496 would in such circumstances be inapplicable to his case. We do not read section 496 as conferring on a person accused of a bailable offence an unqualified, absolute and an indefeasible right to be released on bail ".

Purshotamdas Tricumdas, for Appellant.

K. J. Khandalwala, for Respondents.

G.R. —— *Appeal dismissed.*

[SUPREME COURT.]

N. H. Bhagwati, B. P. Sinha, Syed Jafer Imam, J. L. Kapur and P. B. Gajendragadkar, JJ.
7th February, 1958.

Nagendranath Bora, etc. *v.* Commr. of Hills Division and Appeals, etc.
C.A. Nos. 668, 669, 670 and 672 of 1957.

Eastern Bengal and Assam Excise Act (1910), *section* 9—*Orders of Appellate authority —Whether administrative or judicial—Constitution of India* (1950), *Articles* 226 *and* 227 *—Jurisdiction of High Court under—Limits.*

An order of the appellate authority under Eastern Bengal and Assam Excise Act was subject to the controlling authority of the High Court as the authority did not pass merely administrative orders but had to function in a judicial or quasi-judicial manner.

The Act had created its own hierarchy of officers and appellate authorities to administer the law. So long as those authorities functioned within the letter and spirit of the law, the High Court had no concern with the manner in which those powers had been exercised. In the present cases the High Court appeared to have gone beyond the limit of its powers under Articles 226 and 227 of the Constitution.

1955 S.C.J. 345, applied.

C. K. Daphtary, Solicitor-General for Appellant in C. A. No. 672 of 1957.

S. M. Lahiri Advocate-General (Assam), *A. V. Viswanatha Sastri* and *D. Chaudhari* and *N. Lal,* for Appellants in C. A. No. 670 of 1957.

S. M. Lahiri, Advocate-General (Assam), *C. K. Daphtary* Solicitor-General, *R. Chowdhary, Ganpat Rai, J. B. Dadachanji* and *N. Lal,* for Respondents in C. A. Nos. 669 and 672 of 1957.

G.R. —— *Appeals allowed.*

Subrahmanyam, J.
3rd December, 1957.

Vengali Ramunni Menon *v.*
The Joint Official Liquidators of
Premier Hosiery Works, Ltd.
Appl. No. 2269 of 1956.
(O.P. No. 26 of 1955).

Company—Broker employed to procure business—Agreement to pay commission at agreed rate and income-tax on commission earned by him—Legality—Liability of company or liquidator in winding up to pay such tax—Companies Act (I of 1956), *section* 200—*Advance paid to broker at commencement of agreement—Right to demand repayment—When arises—Limitation —Limitation Act (IX of* 1908), *Article* 89—*Failure to claim deduction in suit by broker for commission—If bar to claim for deduction at final settlement.*

There is nothing illegal or irregular in an agreement entered into by a company with a broker employed by the company to procure business to the effect that the broker would be paid commission at an agreed rate and would be paid, in addition income-tax on the commission earned. The company would be liable to pay income-tax on the commission earned by the broker, and when the company goes into liquidation and is wound up, the liquidators are bound to pay such tax.

Where a company pays an advance to the broker employed by it to procure business, the company would be entitled to deduct the advance so paid, out of the commission earned by and due to the broker at the time of the final settlement of accounts between the company and the broker. No question of limitation for a suit to recover the advance paid by the company can arise so long as the accounts are not settled.

The fact that the company in a suit by the broker for recovery of his commission for a certain period does not claim to deduct the advance from the brokerage claimed in that suit would not affect either the nature of the company's right in relation to the advance or its right to deduct the advance at the time of the final settlement of accounts. The omission to so claim a deduction would not therefore operate as a bar to the deduction of the advance out of the commission due to the broker at the time of the final settlement of accounts.

P. S. Parameswara Ayyar, for Applicant.

A. K. Sreeraman, one of the joint Official Liquidators in person.

P.R.N.

Application dismissed.
Order of liquidators modified.

P. Rajagopalan, Offg. C.J., and
Ganapatia Pillai, J.
15*th January*, 1958.

C. V. Naidu *v.*
A. V. Jagadisa Nadar.
O.S. Appeal No. 49 of 1953.

Civil Procedure Code (V of 1908), *section* 11—"*Heard and finally decided*"—*Issue or matter arising in pleadings of defendant not adjudicated upon—Court considering some pleas raised by defendant unnecessary for deciding suit in favour of plaintiff—Decision in suit—If* res judicata *in subsequent suit on same questions raised therein—Adverse decision on pleas—If implied by reason of decree in plaintiff's favour—Transfer of Property Act (IV of* 1882), *section* 41—*Applicability—Estoppel by representation and conduct.*

Though in the case of an issue or a matter directly and substantially in issue based upon any specific plea in the pleadings and issues raised in a prior suit, a decision by the Court would operate as *res judicata* in a subsequent suit, where the Court holds that it is not necessary to consider the pleas raised in the pleadings for deciding the claim of the plaintiff, it cannot be said that those issues or matters were

heard and finally decided. It cannot be held that because the Court has given a decision favourable to the plaintiff, the pleas raised by the defendant must be deemed to have been heard and determined. Where it is clear that the Court did not intend to decide, and, in fact, did not decide, certain issues arising in the pleadings and did not apply its judicial mind to the questions at issue in the prior suit covered by such issues and no evidence was taken thereon at all, it must be held that the Court did not decide those issues—did not hear and determine them—and therefore the decision in the prior suit would not operate as *res judicata* so as to preclude an investigation and determination, in a subsequent suit of the questions covered by those issues. Those questions would be still at issue in the later suit.

Case law referred to.

A purchased a property in the joint names of *K*, his wife, and *J*, his son by a concubine on 17th May, 1924. *K* died on 22nd July, 1924 and thereafter *J* filed a suit for a declaration of his title to the property and for possession both in his own right and as the heir and legal representative of *K* (deceased) against the tenant in possession and the vendors of the property, obtained a decree, executed the same and obtained possession on 22nd December, 1924. He thereafter dealt with the property as his own. *A* was alive all this time and died only on 27th October, 1927. *K* was also living with *A* in the family house. *J* was all along treated as the son of *K* and was also described as such in the sale deed taken in the joint names of himself and *K*. The property, after he took possession through Court, remained entered in his name in the registers of the Corporation ever since and the Collector's certificate was also issued in his name.

Held—(1) that it was impossible to believe that the suit was filed by *J*, without the knowledge and active support of *A*, his putative father, and it must be held that *A* held out that *J* was the sole owner of the property and entitled to take possession of it.

(2) that section 41, Transfer of Property Act, applied to the case, and *A*, during his lifetime, would be precluded by the bar of estoppel from putting forward his title, and, therefore, a person claiming under him, such as a legatee under his will, would be equally subject to the bar of estoppel.

The Advocate-General (*V. K. Thiruvenkatachari*), *K. Veeraswami* and *I. Chakrapani*, for Appellant.

C. R. Rajagopalachari, *R. Tirumalaiswami Naidu* and *B. T. Sampath*, for Respondents.

P.R.N. *Appeal allowed.*

Rajagopalan, O.C.J., and Govindaswami *v.*
Rajagopala Ayyangar, J. Ramaswami.
9th December, 1957. L.P.A. Nos. 48 and 49 of 1957.

Madras Agriculturists Relief Act (*IV of* 1938) *and Amending Act* (*XXIII of* 1948), *section* 19 (2)—*If applicable to decrees passed after the commencement of the original Act of* 1938—' *After the commencement of this Act* '—*Meaning of.*

The expression ' after the commencement of this Act ' in sub-section (2) of section 19 of the Madras Agriculturists Relief Act, 1938, which was introduced by the Amending Act XXIII of 1948, refers only to the original Act of 1938 and not to the Amending Act of 1948. Hence the benefit of scaling down of decrees under section 19 of the Act are not still applicable to decrees passed after the date of the original Act and if in such cases the judgment-debtor has failed to claim the benefit of the Act before the passing of the decree he cannot have the decree amended later by resort to section 19 of the Act.

T. R. Srinivasa Ayyar and *T. K. Subramania Pillai*, for Appellant.

T. R. Srinivasan, for Respondent.

R.M. *Appeals dismissed.*

Rajagopalan, O.C.J., and Muthuswami Gurukkal *v.*
Basheer Ahmed Sayeed, J. Ayyaswami Thevan.
17th December, 1957. L.P.A. Nos. 155 and 162 of 1957.

Madras Hindu Religious and Charitable Endowments Act (*XIX of* 1951), *section* 62 (1) *and Code of Civil Procedure* (*V of* 1908), *Order* 39, *rules* 1 *and* 2—*Jurisdiction of Civil Court to grant injunction in appropriate cases*—*If ousted in suits under sectinn* 62 (1) *of Madras Act* (*XIX of* 1951).

In suits instituted under section 62(1) of the Madras Hindu Religious and Charitable Endowments Act, it is not as if the civil Court has no jurisdiction at all to grant any interim relief. What the section prohibits is only the stay of the order of the Commissioner. If the ordinary jurisdiction of the civil Courts are to be ousted by any special statute it must be by express words or necessary intendment of the statutory provision. The ban imposed by section 62(1) of the Madras Hindu Religious and Charitable Endowments Act can be applied only to the extent warranted by the language of that statutory provision. The rest of the jurisdiction of the civil Court, *e.g.*, those regulated by rules 1 and 2 of Order 39, Civil Procedure Code, remain intact.

In a suit to set aside the order of the Commissioner and declare the plaintiff as hereditary trustee the Court can on the plaintiff's application grant an interim injunction restraining the newly appointed trustees from interfering with the plaintiff's possession of the temple lands. Such an injunction will not amount to stay of the operation of the order of the Commissioner within the meaning of section 62 (1) of the Madras Hindu Religious and Charitable Endowments Act. Whether or not an injunction should be granted is a matter for the Court to decide on the facts of each case applying the normal rules of law.

(1952) 2 M.L.J. 441, doubted.

V. J. Ramaswamy Ayyangar, for Appellant.

S. Mohan Kumaramangalam, K. V. Sankaran and *S. Sethuratnam*, for Respondent.

R.M. *Appeals allowed.*

Rajagopalan, O.C.J., and Sundararamanjulu *v.*
Basheer Ahmed Sayeed, J. Kamalammal.
17th December, 1957. O.S.A. No. 123 of 1953.

Deed —Construction—Gift of property equally in favour of two or more persons with a gift over to the descendants of one of them—Gift over—When will take effect—Death of one of the beneficiaries—Rights of the surviving beneficiaries—Theory of cross-remainder.

Where there is a gift equally between two or more persons during their respective lives and after their death the whole property is given over to the descendants

of one of them the Court will presume that the testator's intention was that after the death of one of the original beneficiaries the survivor or survivors will be entitled to the whole of the income during their lifetime down to the period of distribution Th egift over to the descendants of one of the beneficiaries will come into operation only after the death of all the original beneficiaries the principle of construction being that the original beneficiaries took the property as tenants-in-common for life with a like-life interest in remainder to the survivor or survivors on the death of one of them. The Court would imply in such cases a cross-remainder for life between the beneficiaries.

L.R. (1912) 1 Ch. D. 626; L.R. (1916) 2 Ch. D. 50; (1945) 2 M.L.J. 393 (P.C.) and A.I.R. 1922 Pat. 68, referred.

N. K. Mohanrangam Pillai and *N. K. Pattabhiraman*, for Appellant.

K. Tiruvenkatachari and *V. Naghabushanam*, for Respondent.

R.M. ——— *Appeal allowed.*

Rajagopala Ayyangar, J.
18th December, 1957.

Annamalai Ayee Chatram *v.* Ramabadhra Vandayor.
W.P. No. 39 of 1957 and C.R.P. No. 45 of 1957.

Tanjore Tenants and Pannayal Protection Act (XIV of 1952), *section* 13 (1) *and* (2) *and Madras Cultivating Tenants Protection Act (XXV of* 1955), *Amendment Act (XIV of* 1956), *sections* 10 *and* 11—*Effect of later Act on proceedings under earlier Act.*

The territorial extent of the Tanjore Tenants and Pannayal Protection Act, 1952, was primarily restricted to the District of Tanjore and the operation of the Madras Cultivating Tenants Protection Act, 1955, as originally enacted, was confined to areas outside the area to which the Tanjore Act applied and has left the Tanjore Act wholly unaffected. But by the Amending Act (XIV of 1956) the territorial operation of the Cultivating Tenants Protection Act, 1955 was extended to the whole of the State, including the area governed by the Tanjore Act. Section 10 of the Amending Act of 1956 clearly provides for the inter-relation between the provisions of the two enactments. Since the provision of the section 13 (2) of the Tanjore Act are not overridden by any contrary provision in the Cultivating Tenants Protection Act the provisions of sections 10 and 11 of the Amending Act of 1956 relating to transfer of proceedings cannot apply to cases under section 13 (2) of the Tanjore Act as there is no provision in the Act of 1955 corresponding to section 13 (2) of the Act of 1952. The appellate jurisdiction of the Revenue Court under section 13 (2) of the Tanjore Act is not therefore in any way affected by the Madras Act XXV of 1955 as amended by Act XIV of 1956. Similarly a vested right of appeal under section 13 (2) of the Tanjore Act to the Revenue Court from a decision of the Conciliation Officer is a vested right which cannot be taken away by the mere fact that section 11 (2) of the Madras Cultivating Tenants Protection (Amendment) Act (XIV of 1956) superseded the powers of the Conciliation Officer under section 13(1) of the Tanjore Act. If at the commencement of the Amending Act any proceedings under section 13 (1) of the Tanjore Act were pending they would be disposed of by the Revenue Divisional Officer under the later Act. But where no such proceedings were pending but were disposed of before the new Act, the right of appeal under the original Act cannot be taken away, though the claim as to restoration to possession by a cultivating tenant under section 13 (1) of the Tanjore Act is also covered by section 4 of the Cultivating Tenants Act.

T. R. Srinivasan, D. Ramaswami Ayyangar and *O. K. Ramalingam*, for Petitioners.

The Additional Government Pleader (*K. Veeraswami*), *T. S. Kuppuswami Ayyar* and *K S. Nadu*, for Respondent.

R.M. ——— *Petition allowed.*

Rajagopala Ayyangar, J.
18th December, 1957.

Durairajan *v.*
Sivagnanam.
W.P. No. 920 of 1957.

Madras Cinemas (*Regulation*) *Act* (*IX of* 1955) *and Rules—Sections* 3 *and* 5 *and Rule* 35—*Scope of—Licensing of site and licensing of exhibition of film—If entirely independent of each other—Report of the local authority on suitability of site received after one month's time fixed under th, rule—Effect.*

Sections 3 and 5 of the Madras Cinemas (Regulation) Act, 1955, reflect the correlation between the licensing of a place where any exhibition of a film is to be given and the licensing of the exhibition of the film itself. The licensing of the place is merely a step in the grant of a license to conduct a cinema show. The two licenses, *viz.*, one for the place and the other for the exhibition of the film, are not independent in the sense that one should be viewed without its relationship to the other. If as between two rival applicants for a licence to run a cinema exhibition if one has a right to be preferred under section 5 of the Act by virtue of his previous experience the rules do not enjoin the grant of a certificate in regard to the place chosen by the other.

It is true that under rule 35 of the Madras Cinemas (Regulation) Rules, the local authority concerned has to submit its view and recommendation to the licensing authority about the suitability of the site, within one month. Though a report, if sent after the expiry of the period aforementioned could not be taken into account as such by the licensing authority still the facts stated by the local authority as regards the suitability or otherwise of the site, can be taken into account as matters relevant for the grant of a licence for exhibition. If the report is received by the licensing authority before actual orders are passed by it there is nothing wrong or illegal in their looking into it and considering the grounds stated therein as regards the suitability of the site.

T. R. Srinivasan and *A C. Munuswami Reddi*, for Petitioner.

The Additional Government Pleader (*K. Veeraswamy*), *R. M. Seshadri* and *S. Bhaskaran*, for Respondent.

R.M. ——— *Petition dismissed.*

Ramaswami, J.
18th December, 1957.

Arumugha Gounder *v.*
Natchimuthu Pillai.
S.A. No. 615 of 1955.

Hindu Succession Act (*XXX of* 1956), *section* 14—*Applicability and scope—Possessed of the property—Meaning of—Limited owner mortgaging property prior to Act—If entitled to the benefit of the Act.*

It is now well settled that section 14 of the Hindu Succession Act, 1956, is retrospective and it enlarges the limited estate of the Hindu women into absolute estate in cases where they are possessed of the property when the Act came into force. The word possession is used in a broad sense and contemplated any kind of possession recognised by law and not necessarily a physical possession, the object being to benefit Hindu females converting their limited interest into an absolute one. The Act is not intended however to benefit alienees who have purchased properties before the coming into force of the Act from such limited estate owners. In such cases the limited owner could not be said to be possessed of the property on the date of the coming into force of the Act and as such the benefit of section 14 cannot be attracted.

Where a limited owner has mortgaged her property before the Act the right of redemption being subsisting in her on the date of the coming into force of the Act, she will be entitled to the benefit of section 14.

T. R. Srinivasan and *A. C. Munuswami Reddi*, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), *R. M. Seshadri* and *S. Bhaskaran*, for Respondent.

R.M. ——— *Appeal allowed.*

Balakrishna Ayyar, J.
7th January, 1958.

Kandaswami Mudaliar *v.*
Panchayat Board, Tallakulam.
W.P. No. 524 of 1957.

Madras Village Panchayats Act (*X of* 1950), *sections* 24, 29, 31, 33 *and* 34—*Powers of the President of a Panchayat—President if could cancel a resolution of the Panchayat.*

Under the provisions of the Madras Village Panchayats Act, 1950, the President of a Panchayat has no power to cancel a resolution of the Panchayat Board, of which he is only the administrative head.

T. Chengalvarayan, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), for Respondent.

R.M. ——— *Rule absolute.*

Somasundaram, J.
8th January, 1958.

Marudhayee *v.*
Malla Govindan.
Crl. Appeal. No. 505 of 1957.

Criminal Procedure Code (*V of* 1898), *section* 247—*Procedure under—Acquittal of an accused on the ground of absence of the complainant—Duty of Magistrate to exercise discretion.*

It is no doubt true that under section 247 of the Code of Criminal Procedure a Magistrate is empowered to acquit an accused on the ground of the non-appearance of the complainant on the hearing date. But before doing so the Magistrate should exercise the discretion vested in him by the same section to adjourn the case to some other date or to dispose of the case on merits where he considers the personal appearance of the complainant unnecessary. The power of acquittal under the section is not to be exercised mechanically but after the exercise of proper discretion in relation to the other provisions of the section.

P. Shariuddin, *M. R. Krishnan*, and *S. M. Amjad Nainar*, for Appellant.

The Public Prosecutor (*P. S. Kailasam*), for the State.

P. A. Krishnan Kutty Nair, for Accused 1 and 2.

R.M. ——— *Appeal dismissed with observations.*

Rajagopalan, O.C.J., and
Ganapatia Pillai, J.
15th January, 1958.

Kuriakose *v.*
Kuriakose.
O.S.A. No. 39 of 1957.

Divorce Act (*IV of* 1869), *section* 36—*Alimony* pendente lite—*Quantum of—Net average income—What is—Cost of the suit—Provision for—Circumstances to be taken into consideration.*

In suits for divorce possession of independent means by the wife would no doubt be a relevant factor in deciding whether any provision should be made in her favour by way of alimony *pendente lite* or towards her costs of defending the suit. The mere fact that the wife is in possession of certain jewellery which cannot be said to be in excess of what a lady of her status in life could be expected to possess for her personal use, or that she is in possession of certain household utensils or furniture none of which she could be expected to sell for her maintenance or to finance the litigation, is no ground to disallow the claim. In deciding the quantum of alimony *pendente lite* the Court should take into consideration the net average income of the husband, which in cases of salaried persons would mean the salary, less what he has to pay by way of income-tax, contributions towards Provident Fund, etc.

G. Vasantha Pai and *D. Padmanaba Pai*, for Appellant.

E. Antony Lobo, for Respondent.

R.M. ——— *Orders accordingly.*

Rajagopalan, O.C.J., and
Ganapatia Pillai, C.J.
20th January, 1958.

Shanmugha Udayar *v.*
Sarangapani Goundar.
A.A.O. No. 285 of 1957.

Representation of the People Act (*XLIII of* 1951), *section* 7 (d)—*Object of—Interest in a contract—What amounts to—Gift or loan of money to a contractor—If would amount to an interest in the contract.*

The word ' interest ' in section 7(*d*) of the Representation of People Act, 1951, should be given its normal meaning, *viz.*, a pecuniary or material interest. It is not every sentimental interest that would attract the disqualification under the section. The object of the section is to prevent the conflict between interest and duty that might inevitably arise if a person seeking an elected office is interested in a contract with the appropriate Government. Hence the interest in any contract as contemplated by the section is a substantial material or commercial interest. The mere fact that a candidate gave a gift to a relation of his, who happens to be a contractor under the appropriate Government would not amount to proof of the candidate having an interest in the contract itself. Cases of loan to a contractor might stand on a different footing as there is an obvious expectation of a repayment.

Hutton v. *Wilson*, (1889) L.R. 22 Q.B.D. 744; *Hunnings* v. *Williamson*, L.R. 11 Q.B.D. 533 and *Lapiah* v. *Braithwaite*, L.R. (1925) 1 K.B.D. 474, referred.

T. Venkatadri, *P. R. Gokulakrishnan* and *G. K. Raman*, for Appellants.

P. S. Balakrishna Ayyar and *P. S. Ramachandran*, for Respondent.

R.M. ——— *Appeal dismissed.*

Balakrishna Ayyar, J.
20th January, 1958.

Thiruvengadaswami *v.*
Commissioner, Hindu Religious and
Charitable Endowments, Madras.
C.R.P. No. 1448 of 1957.

Madras Hindu Religious and Charitable Endowments Act (*XIX of* 1951), *section* 62 (1) (ii)—*Right of suit within* 90 *days to set aside an order—Period how computed—Order—Meaning of.*

The word ' order ' in section 62 of the Madras Hindu Religious and Charitable Endowments Act, 1951, means as in any other case of judicial order, the whole of the order passed and not merely the last sentence of it. Where the Commissioner under the Act passed an order merely stating 'the appeal be and is hereby dismissed' and calls the reasons for the order as annexure, the annexure is an integral part of the order. The date of receipt of the order contemplated by section 62 (1) (ii) of the Act is therefore the date of receipt of the entire order including the so-called annexure and not merely the last sentence of the order. The aggrieved party has a right to file the suit within 90 days of his obtaining a copy of the entire order if the same is not communicated to him. Where however a suit has been filed on receipt of the formal order alone to avoid objections as to limitation, it will be open to the plaintiff to amend the plaint after receiving the reasons for the order—the so-called annexure. The fact that there is no provision in the rules under the Act to furnish free copy of the order or to exclude the time taken to obtain a copy of the order, makes no difference as the ' order ' contemplated by the provision is to be the whole order of which the formal portion and the annexure form an integral part.

V. N. Venkata Varadachari, for Petitioner.

The Government Pleader (*B. V. Viswanatha Ayyar*), for Respondent.

R.M. ——— *Petition allowed.*

Balakrishna Ayyar, J.
21st January, 1958.

Premchand Motichand *v.* Hameed Sultan.
C.R.P. No. 1746 of 1957.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *section* 7 (3) (*a*) *and* (*c*)—*Difference between—Landlord requiring additional accommodation—Building residential—If could ask additional accommodation for non-residential purpose.*

It is no doubt true that under section 7(3) (*a*) of the Madras Buildings (Lease and Rent Control) Act, 1949, a landlord cannot obtain eviction of his tenant from a residential building unless he wants the same for his own residence and in case of a non-residential building unless he wants it for purposes of his business. But sub-clause (*c*) of section 7 (3) does not appear to contain any such limitation. Under sub-clause (*c*) if a landlord could satisfy the Controller that he wants additional accommodation in the same building a portion of which is already under his occupation, it is open to him to readjust the additional accommodation in the manner convenient to him and it cannot be insisted that the additional accommodation sought for should be used by the landlord for the same purpose for which the tenant sought to be evicted was using it.

Kesavalal Tarwady, for Petitioner.

M. S. Venkatarama Ayyar and *V. Krishnan*, for Respondent.

R.M. ——— *Petition dismissed.*

Somasundaram, J.
22nd January, 1958.

Swami Aiya, *In re.*
Crl. Rev.C. No. 551 of 1957.
Crl. Rev. P. No. 538 of 1957.

Penal Code (*XLV of* 1860), *sections* 99 *and* 353 *and Code of Criminal Procedure* (*V of* 1898), *sections* 42, 54, 56 *and* 75 *to* 87—*Sub-Inspector of Police given warrant to arrest the accused—Constable following the Sub-Inspector arresting the accused—Use of force by the accused against the Constable—If no offence—Every person in section* 42, *Criminal Procedure Code —If includes the Police Officers accompanying the authorised officer—Sections* 54 *and* 56—*Combined effect of—If affected by sections* 75 *to* 87.

The expression 'every person' in section 42, Code of Criminal Procedure, is not confined to only persons other than the police officers but it includes all persons, including police officers who accompany a sub-Inspector of police for purposes of arresting an accused. The fact that under the warrant issued only the sub-Inspector is authorised to arrest does not mean that the other police officers who accompanied him are acting illegally if they assist the sub-Inspector in preventing the escape of the accused within the scope of section 42 of the Criminal Procedure Code. Such officers will come within the scope of section 99, Indian Penal Code and there could be no right of private defence against them.

A combined reading of sections 42 and 54 of the Code negatives any right of private defence against an officer either aiding another officer under section 42 or acting by himself under section 54 of the Code and the provisions of section 56 of the Code do not in any way limit the operation of section 56.

It is no doubt true that sections 75 to 86 of the Code of Criminal Procedure lay down certain procedure to be followed when the Court issues a warrant for the arrest of a particular person. But these provisions do not affect the action taken by officers under section 42 and section 54 of the Code.

(1948) 1 M.L.J. 377, doubted and explained. I.L.R. 40 Mad. 1028, foll.

Case law referred.

S. Mohan Kumaramangalam and *K. V. Sankaran*, for Petitioner.

The Public Prosecutor (*P. S. Kailasam*), for the State.

R.M. ——— *Petition dismissed.*

[SUPREME COURT.]

S.R. Das, C.J., T.L. Venkatarama Aiyar
S.K. Das, A.K. Sarkar and Bose, JJ.
14th February, 1958.

State of U.P. *v.* Tobit and others.
Cr.A. No. 128 of 1955.

Criminal Procedure Code (*V of* 1898), *section* 419—*Limitation period—Filing of certified copies.*

Having regard to the purpose and context of section 419 of the Criminal Procedure Code it is necessary to file a certified copy of the Judgment of the Court appealed from along with the memorandum of appeal. The filing of an uncertified copy could not be considered compliance with the requirements of that section.

G. C. Mathur, for Appellant.

S. Andley, for Respondent.

G.R. *Appeal dismissed.*

Rajagopala Ayyangar, J.
16th December, 1957.

Chidambaram *v.* Muthukumaraswami.
W.P. No. 973 of 1956.

Madras Hindu Religious and Charitable Endowments Act (*XIX of* 1951), *sections* 39 *and* 42—*Effect of on schemes framed earlier—Qualification of trustees under earlier scheme—If could be overlooked—Misconduct of one of the members of the family of hereditary trustees—If abrogates the rights of other members to become hereditary trustee.*

It is true that sections 39 and 42 of the Madras Hindu Religious and Charitable Endowments Act, 1951, abrogate certain provisions of the schemes already framed in regard to institutions within the Act and give a discretion to the Commissioner to appoint trustees to such institutions. If any particular scheme contained provisions which are found later to work to the detriment of the institution the proper modeof removing thehardship would be, not by ignoring the provisions of the scheme but by having the scheme amended by appropriate proceedings in that behalf. Where a scheme provides for a specific number of trustees to be appointed and their qualifications, the number might be varied by the Commissioner but the qualifications cannot be overlooked.

Where a member of a family from which a trustee is to be appointed under a scheme is found to be guilty of misconduct prejudicial to the interests of the institition his claim to trusteeship might be overlooked. But on that score the claim of the other members of the family cannot be rejected.

T. M. Chinnayya Pillai, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*) *V. Srinivasan* and *D. V. Sivagnanam,* for Respondent.

R.M. *Scope of the Rules discussed.*

Rajagopalan, O.C.J., and
Basheer Ahmed Sayeed, J.
17th December, 1957.

Narayana Ayyar *v.* Veerankutti.
C.R.P. No. 77 of 1956.

Court-fees Act (*VII of* 1870), *section* 6 *and Madras City Civil Court Act* (*VII of* 1892) *section* 16 (3) *and Madras City Civil Court Amendment Act* (*X of* 1955), *section* 8—*Transfer of suits from the Original Side of the High Court to the City Civil Court by virtue of the enhanced jurisdiction of the City Civil Court—If liable to levy of additional Court-fees in the City Civil Court, if there is any difference in the rates of Court-fees in the two Courts.*

Section 8 of the Madras City Civil Court Amendment Act (X of 1955) provides for transfer of all pending suits on the Original Side of the High Court to the City Civil Court, if they are cognisable by the said Court by virtue of the enhancement of its jurisdiction. Such transfers are effected automatically by the statute and the transfer is not one by the High Court under its powers under section 16 of the Madras City Civil Courts Act, 1892. The proviso to section 16 (3) of the saidAct clearly provides for recovery of additional Court-fee where a suit is transferred by the High Court to the City Civil Court under that section. But this provision has no application to the statutory transfer effected by the recent Amending Act X of 1955. Section 6 of the former Court-Fees Act, 1870, cannot also apply to such cases as the word 'received' in that section cannot have a wide meaning as to include cases transferred automatically by Statute from one Court to another without the intervention of the parties. Hence neither under section 16 of the Madras City Civil Courts Act, 1892, nor under section 6 of the Court-fees Act, 1870, can additional Court-fees be levied on plaints v lidly instituted in the Original Side of the High Court when they are transferred to the City Civil Court by virtue of the Amending Act X of 1955.

G. N. Chari, R. Srinivasan, B. V. Viswanatha Ayyar, Alladi Subramaniam and *Alladi Kuppuswami*, for Petitioners.

The Additional Government Pleader (*K. Veeraswami*) for Respondent.

R.M. *Petition allowed.*

Balakrishna Ayyar, J. Viswanatham Chettiar *v.*
8th January, 1958.

C.R.P. Nos. 1437 to 1440 of 1957.

Madras Cultivating Tenants (Payment of Fair Rent), Act (XXIV of 1956), *section* 7 —*Applicability —Scope of Act—Difficulties in administration.*

The Madras Cultivating Tenants (Payment of Fair Rent) Act, 1956 is hard to understand in some respects since certain ideas have been incorporated into it without providing any consequential remedy. To some extent it is true that section 7 of the Act could be invoked only after the fair rent is fixed under the Act. But there is no provision for any remedy to the landlord till the fixation of fair rent and no penalty is attached to the removal by a tenant of the crop without a division contrary to the provisions of section 7 of the Act.

To avoid such hardships the best way of interpreting the Act will be to hold that prior agreements entered into between landlords and tenants will be valid and enforceable except those portions of the agreement which are repugnant to the provisions of the Act.

Till a fair rent is fixed the Court can proceed on the basis that the contract entered into by the parties voluntarily is a fair and reasonable one and that a given crop year is a normal one unless exceptional circumstances are proved. On this basis the landlord should be paid his due share as per the contract as modified or superseded by the Act, till a fair rent is fixed.

G. R. Jagadisan and *T. S. Srinivasan*, for Petitioner

S. Mohan Kumaramangalam and *K. V. Sankaran*, for Respondent.

R.M. *Petition allowed.*

Somasundaram, J.
8th January, 1958.

Subramanyam and others.
Crl. Rev. Case No. 393 of 1957.
Crl. Rev. Pet. No. 387 of 1957.

Criminal Procedure Code (V of 1898), sections 1 (2) and 403 (4) and Madras Village Courts Act (I of 1889) and the rules framed thereunder—Rule 31—Summary dismissal of a complaint by the village Court for failure of complainant to appear on the day fixed for hearing—If amounts to acquittal of the accused—Fresh charge-sheet filed subsequently before the regular Court in respect of the same matters under different provisions of the Penal Code (XLV of 1860)—If barred—Practice—Principle of.

The procedure applicable to village Courts under the Village Courts Act for trial of offences is expressly saved by section 1 (2) of the Code of Criminal Procedure and as such a mere dismissal of a complaint by a village Court u der rule 31 of the rules framed under the Village Courts Act for failure of the complainant to appear cannot amount to an acquittal within the meaning of the Code of Criminal Procedure so as to bar a fresh prosecution before the regular Courts under the Code in respect of the same matter. It may be true in certain cases that where a Court of inferior jurisdiction acquits an accused of a charge of a minor offence, *e.g.*, hurt to a public servant, then, when a prosecution is laid before a Court of superior jurisdiction for a more serious offence in respect of the same incident, the superior Court is bound by the finding of the inferior Court if the evidence relating to the minor offence is also included in the serious offence. But this does not mean that the dismissal of a complaint by a Court which had no jurisdiction to hear the complaint even if the dismissal might tantamount to an acquittal under the rules of procedure of that Court, will bar a fresh prosecution before a regular Court for certain other offences arising out of the same incident.

A.I.R. 1956 S.C. 415, explained.

To such cases section 403 (4) of the Code of Criminal Procedure will apply and a fresh prosecution for a different offence is respect of the same incident will not be barred.

G. Gopalaswami and *V. Gopinathan*, for Petitioners.

The Advocate-General (*V. K. Tiruvenkatachari*), and The Public Prosecutor (*P. S. Kailasam*) for State.

V. Srinivasan, for Complainant.

R.M.

Petition dismissed.

Balakrishna Ayyar, J.
20th January, 1958.

Ravamanickkammal *v.*
Ammani Ammal.
C.R.P. No. 1521 of 1957.

Madras Cultivating Tenants Protection Act (XXV of 1955), section 3 (4) (b)—Order of Revenue Divisional Officer directing the tenant to tender the arrears of rent to landlord—Legality—When can be questioned.

It is no doubt true that under section 3 (4) (*b*) of the Madras Cultivating Tenants Protection Act a Revenue Divisional Officer can only direct the tenant to deposit the arrears of rent in Court. He has no jurisdiction under the Statute to direct the tenant to pay or tender the rent to the landlord. But where such an order has been made and the tenant did not raise any objection to it, it is not open to him to question later the validity of that order in revision proceedings arising out of the eviction order passed against him due to his failure to tender the rent as directed.

S. Mohan Kumaramangalam, K. V. Sankaram and *S. Palaniswami*, for Petitioners.

M. R. Narayanaswami, for Respondent.

R.M. *Petition dismissed.*

Panchapakesa Ayyar, J.
7th February, 1958.

Ramanathan Chettiar *v.* Somasundaram Pillai.
C.R.P. No. 1185 of 1954.

Court-fees Act (*VII of* 1870), *section* 7 (*iv*) (*c*) *and Madras Court-fees and Suits Valuation Act* (*XIV of* 1955), *section* 25—*Suit by landlord against a number of tenants of several items of land for appointment of a receiver on the ground that the tenant have entered into a conspiracy to remove the crops without paying his waram dues—Valuation for purpose of Court-fee.*

A suit by a landlord against a number of tenants of several items of lands for the appointment of a receiver on the allegation that the tenants have entered into a conspiracy to deprive him to his legitimate waram share of the crops by removing the entire crop, cannot be treated as a bundle of suits, each attracting a fixed Court-fee under Article 17 (*b*) of Schedule II of the Court-fees Act of 1870. To such cases section 7 (*iv*) (*c*) of the Act will apply. But Court-fee need not be paid on the market value of the lands but only on the value of the waram claimed, *i.e.*, the estimate of the value of the plaintiffs share of the crop, since the title to the land is not in dispute.

A. Sundaram Ayyar, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), for Respondent.

R.M. *Orders accordingly.*

Ramaswami, J.
14th February, 1958.

Coimbatore Municipality *v.* Narayanan.
Crl. Mis. Pet. No. 1275 of 1957.

Criminal Procedure Code (*V of* 1898), *section* 417 (4)—*Delay in applying for Special Leave—If could be excused—Limitation Act* (*IX of* 1908), *section* 5—*Applicability.*

The Code of Criminal Procedure is a general law relating to procedure and not a special law within the meaning of section 29 of the Limitation Act. Hence section 5 of the Limitation Act is applicable in terms to applications for Special Leave under section 417 (4) of the Code of Criminal Procedure and the delay, if any, in filing such an application can be excused.

S. Mohan Kumaramangalam and *N. Natarajan*, for Petitioner.

V. T. Rangaswami Ayyangar, for Respondent.

V. V. Radhakrishnan for Public Prosecutor (*P. S. Kailasam*), for the State.

R.M. *Orders accordingly.*

[SUPREME COURT.]

S. R. Das, C.J., T. L. Venkatarama Aiyar, S. K. Das, A. K. Sarkar and Bose, JJ.
18*th February*, 1958.

K. S. Srinivasan *v.* Union of India.
C.A. No. 78 of 1957.

Constitution of India (1950), *Articles* 310 *and* 311—*Civil Service* (*Temporary Service*) *Rules*, 1949—*Quasi-Permanent Service*.

Following the decision of the Court in *Parshotam Lal Dhingra* v. *Union of India*, 1957 S.C.J. 217 the majority rejected the appeal that the impugned orders violate the constitutional guarantee given by Article 311 (2) to the appellant who is the holder of a Civil post under the Union.

Per Bose, J. (dissenting) :—Equity required that the person, who was least in error, should suffer less. In the present case the respondent had transferred the appellant on the assurance of quasi-permanency and therefore it would be in consonance with justice to give him this benefit and allow the appeal.

K. S. Krishnaswami Aiyangar, for Appellant.

P. A. Mehta, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

N. H. Bhagwati, J. L. Kapur, P. B. Gajendragadkar, JJ.
18*th February*, 1958.

Kashinath Sankarappa Wani *v.*
New Akot Cotton Ginning and Pressing Co.
C.A. No. 77 of 1954.

Limitation Act (*IX of* 1908), *section* 14—*The Commercial Documents Evidence Act* (*XXX of* 1939).

The Court admitted the certified copies of the balance sheet of the Respondent Co., in evidence under the Commercial Documents Evidence Act but held that this admission of the document was of no avail to the Appellant to get over the limitation bar.

C. B. Aggarwala, Senior Advocate with *Ratnaparkhi Anant Govind*, for Appellant.

Veda Vyasa, Senior Advocate with *Ganpat Rai*, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, S. J. Imam and K. Subba Rao, JJ.
18*th February*, 1958.

Chintaman Rao *v.*
State of Madhya Pradesh.
Cr. A. No. 93 of 1955.

Factories Act (*LXIII of* 1948), *section* 2 (*l*)—"*Workmen*"—*Essentials to come under the definition of* "*workmen*".

Attendance and other registers were required to be maintained with regard to the employment of persons who could be classed as workmen under section 2 (*l*) of the Factories Act. [In the instant case it was held that in the light of the particular contract between the appellants and the contractors, the latter and their employees were outside the scope of the definition and hence the conviction of the appellant was bad.]

M. C. Setalvad (Attorney-General of India), for Appellant.

I. N. Shroff, for Respondent.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

S. R. Das, C.J., T. L. Venkatarama Aiyar, S. K. Das, A. K. Sarkar and Bose, JJ.
19*th February*, 1958.

Tata Iron & Steel Co. *v.*
State of Bihar.
C.As. Nos. 412 & 413 of 1956.

Bihar Sales Tax Act (*XIX of* 1947) *as amended in* 1948, *section* 2 (g)—*Constitutional validity and scope.*

Government of India Act (1935), *Item No.* 48 *of List II of the Seventh Schedule—Sales of Goods Act* (*III of* 1930)—*Scope.*

By the Majority Judges :—The second proviso to section 2 (*g*) of the Bihar Sales Tax Act provides that the sale of any goods which were actually in Bihar at the time when in respect thereof the contract of sale, as defined in section 4 of the Indian Sales of Goods Act was made, or which were produced or manufactured in Bihar by the producer or manufacturer there, should wherever the delivery or contract of sale was made, be deemed for the purposes of this Act to have taken place in Bihar. Section 2 (*g*) of the Bihar Sales Tax Act is therefore valid and the Levy of Sales Tax from July, 1947 to March, 1949 was constitutionally valid.

Per Bose, J.—The taxing provisions did not bear a sufficient nexus to the sale to make them a valid exercise of legislative power under Entry 48 of List II of Schedule VII of the Government of India Act, 1935.

M. C Setalvad (Attorney-General of India), for Appellants.

Mahavir Prasad (Advocate-General) Bihar, for Respondent.

G.R. ——— *Appeals dismissed.*

[SUPREME COURT.]

N. H. Bhagwati, J. L. Kapur and P. B. Gajendragadkar, JJ.
25th February, 1958.

Kashi Bai *v.* Sudharani Ghosh
C.As. Nos. 118 & 119 of 1956.

Limitation Act (*IX of* 1908), *section* 28—*Adverse possession of a coalmine.*

" In our opinion the operations carried on by the appellant were inconsistent with the continuous, open and hostile possession or with the assertion of hostile title for the prescribed period of 12 years necessary to constitute adverse possession."

M. C. Setalvad (Attorney-General of India), for Appellant.

N. C. Chatterji, for Respondents.

G.R. ——— *Appeals dismissed.*

Balakrishna Ayyar, J.
12th February, 1958.

Subramania Odayar *v.*
Board of Revenue, Madras.
W.P. No. 967 of 1957.

Madras Cinemas Regulation Act (*IX of* 1955), *rules* 4 *and* 109(1)—' *Site* '—*Meaning of—Rule* 4—*If binding on the Court in the interpretation of the rules.*

The word ' site ' can be properly used to describe either the exact extent of land occupied by a building or the larger area of which such extent forms a part. In which of the two senses the word is used in a particular statute or rule will depend upon the context.

The word ' site ' used in rule 109 (1) of the Rules framed under the Madras Cinemas Regulation Act, relating to touring cinemas, if understood in the context of the license issued for a specified extent of land, could only mean the entire extent of land and not only that extent which was actually occupied by the cinema shed. The prohibition under that rule against the renewal of a license granted for a site before an interval of three months after the previous license cannot be evaded by shifting the cinema shed to another part of the same site covered by the earlier licence.

Rule 4 of the Rules which provides that any question as to the interpretation of the Rules should be referred to the Government and whose decision is stated to be final, is not binding on the High Court in exercise of its powers under Article 226 of the Constitution.

S. Mohan Kumaramangalam and *N. Natarajan*, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), *R. M. Seshadri* and *S. Bashkaran*, for Respondent.

R.M. ——— *Petition dismissed.*

[SUPREME COURT.]

N. H. Bhagwati, J. L. Kapur, and P. B. Gajendragadkar, JJ.
10th *March*, 1958.

White *v.* White and others.
C.A. No. 19 of 1956.

Divorce—Acts of adultery—Concurrent finding of facts by Lower Courts—Interference with by the Supreme Court—When called for.

The Supreme Court will not ordinarily interfere with findings of fact by the trial Judge and the appeal Court, but if in giving the findings the Courts ignore certain important pieces of evidence, and other pieces of evidence which are equally important are shown to have been misread and misconstrued and the Supreme Court comes to the conclusion that on the evidence taken as a whole no tribunal could, as a matter of legitimate inference, arrive at the conclusion that it has, then interference by the Supreme Court will be called for.

It is plain that when the Court is to be satisfied on the evidence in respect of a matrimonial offence like adultery the guilt must be proved beyond reasonable doubt and it is on that principle that the Courts in India would act, and the reason for adopting this standard of proof is the grave consequence which follows a finding of guilt in martimonial cases.

N. C. Chatterjee, for Appellant.

S. P. Varma, for Respondent No. 1.

G.R. *Appeal allowed.*

[SUPREME COURT.]

S. R. Das, C.J., T. L. Venkatarama Aiyar, S. K. Das, A. K. Sarkar and Vivian Bose, JJ.
11th *March*, 1958.

M. P. V. Sundararamier and Co. *v.* The State of Andhra Pradesh.
P. Nos. 220, 222, 240, and 380-395 of 1955.

Sales Tax Laws Validation Act (VII of 1956)*—Validity and scope—Madras General Sales Tax Act (IX of* 1939)*—Article* 286 *of the Constitution.*

By the Majority Judges.—The Andhra (Madras) Sales Tax Act clearly purported to impose a sales tax on the class of transactions falling within Article 286 of the Constitution and since such levies had been declared invalid by the Supreme Court in the *Bengal Immunity Company's Case*, (1955) 2 S.C.R. 603 : (1955) S.C.J. 672 : (1955) 2 M.L.J. (S.C.) 168 : (1955) An.W.R. (S.C.) 422, the object of the Validation Act was to validate these taxes. The Sales Tax Laws Validation Act was *intra vires* and its effect could not be confined to the collections and levies already made but extended to any proceedings for the assessment of tax under section 22 of the Madras Sales Tax Act.

PER SARKAR, J.—The Andhra (Madras) Sales Tax Act did not authorize the levy of a sales tax on goods which were delivered in Andhra but in which the property passed to the purchaser in the State of Madras.

K. S. Krishnaswami Aiyangar, for Petitioners.

D. Narasaraju, Advocate-General of the Andhra State, for Respondent.

M. C. Setalvad, Attorney-General of India and *C. K. Daphtary*, Solicitor-General of India, for the Union of India—Intervenors.

V. K. Thiruvenkatachari, Advocate-General of Madras, for Intervenors—Madras State.

G.R. *Petitions and Appeal dismissed.*

[SUPREME COURT.]

Syed Jafer Imam, P. B. Gajendragadkar and Vivian Bose, JJ.
11th March, 1958.

Virsa Singh *v.* The State of Punjab.
Cr. A. No. 90 of 1957.

Penal Code (XLV of 1860), section 300, Thirdly—Scope—Gist of offence—Intention to cause death—If essential.

"No one has the licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. Once the four elements of section 300, Indian Penal Code are established by the prosecution, and it is the duty of the prosecution to do so, the offence is one under section 300 "*Thirdly*". It does not matter that there was no intention to cause death".

J. G. Sethi, for Appellant.

M. S. Bindra, for Respondent.

G.R.

Appeal dismissed.

Rajagopalan, O.C.J., and Basheer Ahmed Sayeed, J.
20th December, 1957.

Aboobucker *v.* Kunhamoo.
C.C.C. A. No. 92 of 1957.

Civil Procedure Code (V of 1908), Order 39, rule 1 (a)—Property in dispute in danger of being wrongfully sold in execution of a decree—Interim injunction—If could be ordered against a person who is not a party to the main suit.

An interim relief is granted to a person in any cause on the footing that he is *prima facie* entitled to the right claimed in the main relief and the interim relief. Hence an interim relief sought for during the pendency of a suit could not be greater in scope than what could be granted in the suit itself after the party has established his right to that relief. Whether it be a question of jurisdiction or one of discretion of Court it is a very relevant factor to be taken into account in deciding whether a Court should or even could grant an interim relief of injunction, especially when the person against whom the interim injunction sought for is not a party to the suit and against whom no relief could be granted in the suit itself.

70 M.L.J. 261, referred and explained.

R. Gopalaswami Ayyangar and *K. N. Balasubramanian*, for Appellant.

S. V. Venugopalachari, *P. C. Parthasarathi Ayyangar* and *R. Ramaswami*, for Respondent.

R.M.

Appeal dismissed.

Ramaswami, J.
2nd January, 1958.

Ramaswami *v.* State of Madras.
S.A. No. 707 of 1955.

Madras District Police Act (XXIV of 1859), section 50—'Charge' and 'Officer exercising the powers of a Magistrate'—Meaning of—If applies to departmental enquiries.

The charge contemplated by section 50 of the Madras District Police Act is a charge before a Magistrate in a judicial enquiry and not in a departmental enquiry and the expression 'officer exercising the powers of a Magistrate' in this section would in the circumstances refer only to Magistrates of the First Class. Section 50 of the Act could not in the circumstances apply to departmental inquiries.

R. Gopalaswami Ayyangar, S. Sitarama Ayyar, S. Rajaraman and *P. V. Subramania Ayyar*, for Appellant.

The Government Pleader (*B. V. Viswanatha Ayyar*), for Respondent

R.M.

Appeal dismissed.

Ramaswami, J. State of Madras *v.*
16th January, 1958. Mohd. Ghani.
S.A. No. 840 of 1955.

Riparian rights—Right of an ayacutdar to crossbund a flowing stream in a channel to irrigate his lands—Scope of rights of different riparian owners—Duty of Government to ensure water supply to riparian owners.

While every riparian owner is entitled to divert and utilize the waters of a stream under whose ayacut his land is registered, for purposes of irrigation he is not entitled to obstruct or crossbund a channel to the prejudice of the ayacutdar lower down the stream. Every riparian owner has a right to the ordinary and normal use of the water flowing in the stream. It is the duty of the Government to look to the regulation and distribution of the available water to all the ayacutdars and in case of any obstruction to the flow of water by an upper riparian owner to the prejudice of the lower riparian owners, the Government should take steps and measures to remove the obstruction and ensure the supply of water to the lower riparian owners. The Government cannot absolve itself of its duties by referring the parties to a civil suit.

The Government Pleader (*B. V. Viswanatha Ayyar*), for Appellant.

S. V. Rama Ayyangar, for Respondent.

R.M. ——— *Appeal allowed.*

Rajagopalan, O.C.J., and M. Ct. M. Corporation, Ltd. *v.*
Rajagopala Ayyangar, J. Income-tax Officer, Pudukottai.
17th January, 1958. W.P. No. 563 of 1956.

Income-tax Act (XI of 1922), section 18-A (3) and (8)—Scope of.

Sub-section (3) of section 18-A of the Income-tax Act does not cover every case where the Income-tax Officer is not enabled to make a demand under sub-section (1) of that section. A person who has been assessed to Income-tax at some time or other in previous years cannot be brought within section 18-A (3) merely because he was not assessed to tax for some years later. Where a person is not bound to have voluntarily submitted an estimate under section 18-A (3) he cannot come within section 18-A (8).

G. R. Jagadisan and *T. V. Balakrishnan*, for Petitioner.

C. S. Rama Rao Sahib, for Respondent.

R.M. ——— *Rule absolute.*

Rajagopalan, O.C.J., and Narayanaswami *v.*
Rajagopala Ayyangar, J. Krishnamurthi.
23rd January, 1958. A.A.O. No. 209 of 1957.

Constitution of India (1950), *Article* 191 (1) (*a*) *and* (*e*)—*Representation of the People Act* (*XLVIII of* 1951)—*Office of profit—What amounts to—Employee of Life Insurance Company of India—If holds an office of profit under the Government of India—Regulation of the Corporation prohibiting its employees from standing for election—If amounts to a law disqualifying the candidate within the meaning of Article* 191(1) (*e*) *of the Constitution.*

In order to decide whether a public corporation like the Life Insurance Corporation of India, is a department of the Government, the incorporation of the body he degree of control exercised by the Government, the degree of dependence of the Corporation on the Government for its financial needs and the functional aspects of the Corporation have all to be considered. Having regard to the object and the scope of the legislation which set up the Life Insurance Corporation of India, the Corporation cannot be considered to be a department or servant or agent of the Government. Service under the Insurance Corporation is not service under the Government of the Union within the Article 191 (1) (*a*) of the Constitution.

The expression ' office of profit ' in Article 191(1) (*a*) of the Constitution cannot be construed in a wide sense so as to include service in such statutory corporations which have some relation with the Government. Hence an employee of the Life Insurance Corporation is not disqualified from standing for election to the State Assembly under Article 191(1) (*a*) of the Constitution.

Regulation 29 of the Regulations made by the Life Insurance Corporation under the powers vested in it by section 49 (1) (*b*) of the Life Insurance Act, 1956 is a law made under an Act of Parliament within the meaning of Article 191 (1) (*e*) of the Constitution of India. As that regulation prohibits an employee of the Corporation from standing for election as a member of a Legislative body, such employee will be disqualified under Article 191 (1) (*e*) from contesting an election.

(Historical aspects of the development of public Corporations traced—Nature and functions of such corporations explained—Relationship with Government and scope and extent of Government control examined—Case-law English and Indian discussed.)

The Advocate-General (*V. K. Tirupenkatachari*), *V. V. Raghavan* and *G. Rajan*, for Appellant.

Messrs. Row and *Reddi*, *S. Viswanathan* and *B. R. Dolia*, for Respondent.

R.M. ——— *Appeal allowed.*

Panchapakesa Ayyar and Basheer Ahmed Sayeed, JJ. Kaliammal *v.* Pongiammal.
29th January, 1958. (S.A. No. 712 of 1954)

Civil Procedure Code (V of 1908), Order 18, rule 18—Local inspection by Court—Notes of local inspection—Duty to make and keep it as part of the record—Failure to do so—If vitiates the judgment.

It is no doubt true that Order 18, rule 18 of the Code of Civil Procedure does not in express terms require a Court to make notes of local inspection made by it under that rule and keep it as part of the record. But this omission does not mean that a Judge holding local inspection is not under a duty to make notes of such inspection and keep it as part of the record of the case.

Local inspection is done by the Court in its discretion and it could be done at any stage of the proceedings either *suo motu* or at the instance of the parties to the cause. Though a local inspection might influence the judgment of the Court in varying degrees in different cases and in certain cases may have no bearing at all on the judgment, still the facts discovered at a local inspection might consciously or unconsciously influence its conclusions in the judgment. Hence it is not only desirable but necessary, that a Court making a local inspection should make notes of such inspection and the facts observed by the Court and keep it as part of the record. The judgment of a Court which makes a local inspection but fails to prepare notes of that inspection and keep them on record will be vitiated. Case-law discussed.

S. Thyagaraja Ayyar and *N. Vanchinathan*, for Appellant.

G. R. Jagadisan and *A. R. Ramanathan*, for Respondent.

R.M. ——— *Case remanded.*

Balakrishna Ayyar, J. Velu Pillai *v.* Sevuga Perumal.
29th January, 1958. C.M.P. No. 4388 of 1957.

Madras High Court (Appellate Side) Rules—Rule 48-A (2)—If ultra vires*—Excusing delay in the presentation of a petition—Sufficient cause—When amounts to.*

Rule 41-A (2) of the Appellate Side Rules of the Madras High Court is *intra vires* of the powers of the Court as it is within the rule-making powers of the High Court under section 122 of the Code of Civil Procedure. The rule prescribing a specified number of days for presenting an application to the Court is a matter of procedure and the Court has power by rules framed by it to regulate the time relating to procedural matters.

It is true that under rule 41-A (2) of the Appellate Side Rules the High Court is empowered to excuse the delay in presentation of a petition if sufficient cause is shown. The mere fact that the petitioner mislaid the paper in his village is not a sufficient reason to excuse a long delay of 268 days.

K. Arunachala Sastri, for Petitioner.

M. V. Ganapathi and *M. V. Jagannath*, for Respondent.

R.M. ——— *Petition dismissed.*

Balakrishna Ayyar, J.
2nd January, 1958.

Ratna Mudaliar *v.*
E.O. Cantonment Board,
St. Thomas Mount.
W.P. No. 670 of 1956.

Cantonment Act (II of 1924), *section* 203—*Power of a Cantonment Board to levy license fees for opening of a market—If includes a right to collect licence fee for renewal of license.*

Section 203 (1) of the Cantonments Act, 1924, no doubt empowers a Cantonment Board to levy a license fee to open a private market. That means that when once a license is granted and a market is opened section 203 (1) will cease to apply. The term ' open ' in section 203 (1) will apply only to the first or initial opening of a market and it cannot be construed in an artificial way to apply to every year when a licence is sought to be renewed. The distinction between 'opening a market' and 'keeping open a market' is clearly recognised by the analogous statutes like the City Municipal and District Municipal Acts. Hence a Cantonment Board is not entitled to charge any fees for the renewal of a licence to keep open a market when once the market has been ' opened ' initially in pursuance of a license.

C. Vasudevan, for Petitioner.

The Government Pleader (*B. V. Viswanatha Ayyar*), for Respondent.

R.M. — *Rule absolute.*

Rajagopalan, O.C.J. and
Ganapathia Pillai, J.
23rd January, 1958.

Swamy *v.* Sultan.
A.A.A.O. Nos. 12 and 13 of 1957.

Trade Marks Act (V of 1940), *sections* 20 *and* 73—*Scope—Forum for institution of suits—If section* 73 *applies to passing off actions also—City Civil Court—If has jurisdiction.*

The combined effect of sections 20 and 73 of the Trade Marks Act, 1940, is that a suit to prevent an infringement of a trade mark or for damages for such infringement cannot be instituted at all unless the trade mark is registered. Under the provisions of the Act and even in the case of infringement of registered trade marks such a suit cannot be instituted in any Court inferior to that of a District Court having the requisite jurisdiction such as territorial jurisdiction. Section 20 (2) of the Act no doubt excludes passing off actions from the provisions of the Act. But what is saved under section 20 (2) is only the right of action and it has no bearing on the forum mentioned in section 73. Hence section 73 will apply to passing off actions also and the expression ' otherwise relating to any right in a trade mark ' in the section is wide enough to include passing off actions also, where the alleged misuse of a registered trade mark is in issue. Hence such a suit cannot be instituted in the City Civil Court, Madras, which is not a District Court within the meaning of the section.

A decree of the City Civil Court, Madras, in a suit in which the cause of action is based either wholly or in part on the infringement of a trade mark will be a nullity and the execution Court can look into the pleadings to decide whether the Court had jurisdiction to pass the decree.

C. Srinivasachari and *T. R. Sundaram,* for Appellant.

A. Durairaj, for Respondent.

R.M. — *Appeals allowed.*

Rajagopalan, O.C.J. and
Ramaswami, J.
3rd February, 1958.

Panchapakesan *v.* Revenue Board.
W.A. No. 3 of 1958.

Madras Cinemas Regulation Rules, 1957—*Rule* 109 (1)—*Scope of.*

The expression ' place ' in rule 109 (1) of the Madras Cinemas Regulation Rules, 1957, would include both the site and the superstructure standing thereon and as such both the site and the superstructure have to be approved afresh by the

authorities before a license in Form C is issued after the expiry of three months' period referred to in the rule. It makes no difference even if the operator applying for a fresh license is the same who held the prior license.

S. Mohan Kumaramangalam and *T. Ramalingam*, for Appellant.

The Additional Government Pleader (*K. Veeraswami*), *G. Ramanujam* and *A. Narayanaswami*, for Respondent.

R.M. ——— *Appeal dismissed.*

Balakrishna Ayyar, J. Umapathi *v.* Panchaksharam.
5th February, 1958. W.P. Nos. 914 and 915 of 1957.

Madras Cinemas (Regulation) Act (IX of 1955), *section* 5—*Scope of.*

Constitution of India (1950), *Article* 226—*Jurisdiction under—Nature and scope of.*

Section 5 of the Madras Cinemas (Regulation) Act, 1955, no doubt enumerates certain considerations which the licensing authority is bound to take into account. But it does not exhaustively enumerate all the considerations which the licensing authority may take into account. The mere fact therefore that the licensing authority took into account circumstances not covered by the categories enumerated in section 5, will not, by itself, vitiate the order of the licensing authority. It is of course to be borne in mind that when once the authority takes into consideration matters not expressly enumerated in the Statute it enters into a territory where controversy may become inevitable.

Where between two rival applicants for a license to run a touring cinema the Collector chose one on the gound that the other had already a chance and that everybody should have a chance, when all other considerations are equal, it cannot be said that the consideration taken into account is an unreasonable one.

The jurisdiction of the High Court under Article 226 of the Constitution is a correctional one and the Court has a discretion to interfere or not to interfere with an order. Where it is clear that the authority whose order is sought to be impeached has applied its mind fairly, honestly and impartially and has reached a conclusion which is neither unjust nor improper, the High Court will be slow to interfere with such an order.

G. R. Jagadisan and *T. S. Srinivasan*, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), *R. Sundaralingam* and *R. M. Seshadri*, for Respondent.

R.M. ——— *Petition dismissed.*

Ganapathia Pillai, J. Murugayya Pillai *v.* Seethalakshmi.
7th February, 1958.
C.R.P. No. 298 of 1958.

Practice—Security directed to be furnished by Court as condition of granting stay—Furnishing of security—Object of—Security of immoveable property directed to be furnished before a specified date—Compliance with—What amounts to.

The object of a Court in directing a party to furnish security in immovable property as a condition of its order is to assure the other party to the dispute or the decree-holder that the benefit of the order in his favour or the decree amount would be eventually paid or would be more easily recoverable. This object could be achieved only if a properly enforceable security bond duly engrossed on stamp-paper and registered according to law is put into Court within the time specified. It may be that mere non-registration of the bond within the time fixed by Court may not be a fatal objection if the bond otherwise duly engrossed on stamp paper is filed in time as in such cases the Court can have the document compulsorily registered. But merely putting into Court a draft security bond on unstamped paper on the last day fixed for furnishing security cannot tantamount to compliance with the order of the Court as the obligor could not be deemed to have done what was required of him as the Court would have still to look to him for the furnishing of

[Supreme Court.]

B. P. Sinha, S. J. Imam and K. Subba Rao, JJ.
24th March, 1958.

K. C. Pokhraj *v.* State of Bombay.
Cr. A. Nos. 34-36 of 1956.

Bombay Sales Tax Act, 1946—*Bombay Repealing Act of* 1953, *section* 48 (2)—*Scope—Sanction for prosecution.*

"Notwithstanding the repeal of the Bombay Sales Tax Act of 1956 Act and the said entries, the said repeal shall not affect or be deemed to affect, any right, title, obligation or liability already acquired, accrued or incurred". Accordingly a liability incurred (offence committed, under the repealed Act) is covered by the saving clause embodied in section 48 of the repealing Act.

M. S. K. Shastri, for Appellant.

H. J. Umrigar, for Respondent.

G.R.

Appeals dismissed.

[Supreme Court.]

S. R. Das, C.J., T. L. Venkatarama Aiyar, B. P. Sinha, S. K. Das and A. K. Sarkar, JJ.
28th March, 1958.

Ramkrishna Dalmia *v.*
Justice S. R. Tendolkar.
C.A. Nos. 455-457 of 1957, etc.

Commissions of Inquiry Act (LX of 1952)—*Validity of the Notification appointing a Commission of Inquiry—Constitution of India* (1950)—*Article* 14.

There is no warrant for the proposition that a definite matter of public importance must necessarily mean only some matter involving the public benefit or advantage in abstract, *e.g.,* public health, sanitation or the like or some public evil or prejudice *e.g.,* floods, famine or pestilences, etc. Quite conceivably the conduct of individual persons or companies may assume such a dangerous proportion and may so prejudicially affect or threaten to affect the public well-being as to make such conduct a definite matter of public importance urgently calling for a full inquiry.

A portion of clause 10 of the notification appointing the Commission in the instant case which called upon the Commission to make recommendations about the action to be taken as and by way of securing redress or punishment could not be said to be at all necessary for or ancillary to the purposes of the Commission. The efficacy of the entire Notification was in no way impaired by the deletion of the offending words.

"The facts disclosed in the Notification and the facts brought to our notice by affidavits afford sufficient support to the presumption of the constitutionality of the Notification. It is for the petitioners to allege and prove beyond doubt that other companies or persons similarly situated have been left out and petitioners and their companies have been singled out for discriminatory and hostile treatment. Petitioners have in our opinion failed to discharge that onus".

G. S. Pathak, Senior Advocate with *P. N. Bhagwati, S. K. Kapur* and *Ganpat Rai,* Advocates for Appellants in C. A. Nos. 455-457 of 1957 and Respondents in C. A. Nos. 656-658 of 1957.

C. K. Daphtary, Solicitor-General with *G. N. Joshi* and *R. H. Dhebar,* Advocates for Respondents in C.A. Nos. 455-457 of 1957 and Appellants in C. A. Nos. 656-658 of 1957.

G.R.

Cross-Appeals dismissed.

[SUPREME COURT.]

N. H. Bhagwati, B. P. Sinha, S. J. Imam, J. L. Kapur and P. B. Gajendragadkar, JJ.
19th March, 1958.

Express Newspapers *v.* Union of India.
P. Nos. 91, 99, 100, 101, 103, 116, 117 & 118 of 1957 and C.A. Nos. 699 and 703 of 1957.

Working Journalist (Conditions of Service) Miscellaneous Provisions Act, (1953), *Constitutional validity—Articles* 14 *and* 19 *of the Constitution.*

" There is no escape from the conclusion that the Wage Board has contravened the mandatory requirements of section 9 of the Act and, in consequence, its decision is *ultra vires* the Act itself ".

" We have come to the conclusion that none of the provisions thereof is violative of the fundamental rights enshrined in Article 19 (1) (*a*), 19 (1), 14 and of Article 32 save the provisions contained in section 5 (1) (A) (III) of the impugned Act, which is violative of the fundamental rights guaranteed under Article 19 (1) (*g*) and is, therefore unconstitutional and should be struck down ".

" The appellants having substantially succeeded in their respective petitions under Article 32 of the Constitution, the question has now become purely academic and we need not spend any time over them (Civil Appeals). The result, therefore, is that these Appeals will be allowed and the decision of the Wage Board set aside. The order for costs, however, in each of these Appeals will be that all the parties thereto shall bear and pay their own costs thereof ".

M. K. Nambiar, K. M. Munshi, S. P. Sinha and *L. K. Jha,* Senior Advocates for Petitioners and Appellants.

M. C. Setalvad, Attorney-General of India, *N. C. Chatterjee* and *A. V. Viswanatha Shastri,* Senior Advocates for Respondent.

G.R.

Petitions and Appeals partially allowed.

[SUPREME COURT.]

N. H. Bhagwati, B. P. Sinha, S. J. Imam, J. L. Kapur and P. B. Gajendragadkar, JJ.
19th March, 1958.

Kasturi & Sons *v.* N. Salivateeswaran.
Petition No. 249 of 1956.

Working Journalist (Condtions of Service) Miscellaneous Provisions Act (1953), *section* 17—*Scope of enquiry—Articles* 14 *and* 19 *of the Constitution of India.*

The inquiry contemplated by section 17 was " a summary inquiry of a very limited nature and its scope is confined to the investigation of the narrow point as to what amount is actually due to be paid to the employee under the decree, award, or other valid order obtained by the employer after establishing his claim in that behalf ".

" We are reluctant to accept the view that the Legislature intended that the specified authority or the State Government should hold a larger inquiry into the merits of the employee's claim without conferring on the State Government or the specified authority the necessary powers in that behalf ".

R. Ramamurthy, Advocate for Petitioners.

Purshotamdas Tricumdas, Senior Advocate for Respondent.

G.R.

Petition dismissed.

[SUPREME COURT.]

N. H. Bhagwati, S. K. Das, Venkatarama Aiyar, A. K. Sarkar, and Vivian Bose, JJ.
21st March, 1958.

State of Bihar *v.* Basawan Singh.
Cr.A. No. 134 of 1955.

Penal Code (XLV of 1860), *section* 161—*Evidence of raiders—Independent corroboration—Necessity.*

" It is wrong to deduce from *Rao Shiv Bahadur Singh's case* 1954 S.C.R. 1098: 1954 S.C.J. 362 any universal or inflexible rule that evidence of the witnesses of the raiding party must be discarded unless independent corroboration is available.

" All that we say is that, in assessing the value of the testimony of the witness, diverse factors must arise for consideration and the comparative importance of this or that factor must depend on the facts or circumstances of each case.

" No standard higher or stricter than this can be laid down or was laid down in *Rao Shiv Bahadur Singh's case.*

" In view of the findings of fact arrived at by the High Court the only reasonble conclusion is that the respondent is guilty of the offence with which he has been charged and the order of acquittal is clearly erroneous ".

C. K. Daphtary, Solicitor-General, for Appellant.

H. J. Umrigar, for Respondent.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

S. R. Das, C.J., T. L. Venkatarama Aiyar S. K. Das, Gajendragadkar and Vivian Bose, JJ.
24th March, 1958.

Raigarh Jute Mills Ltd. *v.* Eastern Railway.
C.A. No. 231 of 1954.

Railways Act (IX of 1890), *section* 28—*Railway Rates Tribunal—"Undue preference".*

" All cases of unequal rates cannot necessarily be treated as cases of preference because the very concept of preference postulates competition between the person or traffic receiving preference and the person or traffic suffering prejudice in consequence ". The Court also found that the appellant had not succeeded in establishing a case that the rates were " unreasonable or excessive ".

S. C. Isaacs, for Appellant.

H. N. Sanyal, Additional Solicitor-General, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, S. J. Imam and K. Subba Rao, JJ.
24th March, 1958.

Chandranath Mukherjee *v* Tusharika Debi and others
C.A. No. 39 of 1955.

Bengal Tenancy Act (VIII of 1855), *sections* 15 *and* 16.

" A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit or other proceedings any rent payable to him as the holder of the tenure until the duties imposed upon him by section 15 have been performed ".

Bagchi for Appellant.

N. C. Chatterjee for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

N. H. Bhagwati, J. L. Kapur and A. K. Sarkar, JJ.
31st March, 1958.

Workmen of Assam Co. *v.* Assam Co. Ltd.
C.A. No. 34 of 1957.

Industrial Disputes Act (XIV of 1947)—*Payment of bonus—Computation.*

Applying judgment in C.A. Nos. 217 to 219 of 1956 decided on 5th November, 1957—*Sree Meenakshi Mills, Ltd.* v. *Their Workmen* and the formula adopted therein *i.e.*, " distributable surplus has to be ascertained after providing from the gross profits for (1) depreciation, (2) rehabilitation, (3) return at 6 per cent. on the paid-up capital, (4) return on the working capital at a lesser but reasonable rate, and (5) for an estimated amount in respect of the payment of income-tax ". The decision of the Labour Appellate Tribunal was, therefore, set aside and that

of the Industrial Tribunal restored, with the modification that the company should make available an additional amount required for the payment of a bonus to the artisans of the company. The Court also approved "the unit scheme for the bonus already adopted by the Company.

C. B. Aggarwala, for Appellant.

Goswami, for Respondent.

G.R. — *Appeal allowed.*

[SUPREME COURT.]

S. R. Das, C.J., T. L. Venkatarama Aiyar, S. K. Das, A. K. Sarkar and Vivian Bose, JJ.
1st April, 1958.

State of Madras *v.* Ganon Dunkerley & Co. Ltd.
C. A. No. 210 of 1956.

Madras General Sales Tax Act (IX of 1939), *Sale of Goods Act (III of* 1930)—*Government of India Act* (1935), *Entry* 48, *List II of the Seventh Schedule—Meaning of the term "Sale."*

"According to the law both in England and India, in order to constitute a sale it is necessary that there should be an agreement between the parties for the purpose of transferring title to goods, which of course pre-supposes capacity to contract, that it must be supported by consideration and that as a result of the transaction, property must actually pass in the goods. Unless all these elements are present, there can be no sale". The expression 'sale of goods' in Entry 48 of the Government of India Act is a term of law, its essential ingredients being an agreement to sell movables for a price and property passing therein pursuant to that agreement. In a building contract which is, as in the present case, one, entire and indivisible and that is its form there is no sale of goods and it is not within the competence of the Provincial Legislature under Entry 48 to impose a tax on the supply of the materials used in such a contract treating it as a sale".

V. K. Thiruvenkatachari, the Advocate-General of Madras, for Appellant.

A. V. Vishwanath Shastri, for Respondent.

C. K. Daphtary, Solicitor-General for Union of India—*D. Narasaraju*, Advocate-General, for the State of Andhra, *Mahavir Prasad*, Advocate-General for the State of Bihar, *S. M. Sekhri*, Advocate-General for the State of Punjab, *T. M. Sen*, for the State of Mysore and *S. B. Sahrya*, for the State of Kerala, for Intervenors.

G.R. — *Appeal dismissed.*

Panchapakesa Ayyar, and Basheer Ahmed Sayeed, JJ.
3rd February, 1958.

Rajalakshmi Ammal *v.* Muthuswami Gounder.
L.P.A. No. 198 of 1957.

Civil Procedure Code (V of 1908), *Order* 40, *rule* 1—*Power of Court to appoint Receiver in simple money suits—Scope and extent of.*

It is no doubt true that the powers of a Court under Order 40, rule 1, Civil Procedure Code are wide and in extraordinary cases the Court has jurisdiction to appoint a Receiver in simple money suits even before decree, provided of course the Court is satisfied that it is just and convenient to appoint a Receiver.

But ordinarily in simple money suits the plaintiff has a right to pursue his remedies by way of an attachment before judgment and a Court will not exercise its discretionary powers of appointing a Receiver in such cases unless there are extraordinary circumstances.

R. Gopalaswami Ayyangar, M. Krishna Bharathi and *M. S. Sethu*, for Appellant.

T. K. Subramania Pillai and *S. Mohan*, for Respondent.

R.M. — *Appeal dismissed.*

Rajagopalan, O.C.J. and Ramaswami, J.
4th February, 1958.

Munia Servai *v.* Hanuman Bank, Ltd.
O.S.A. No. 3 of 1958.

Banking Companies Act (X of 1949)—*Jurisdiction of High Court under—If Ordinary Original Civil Jurisdiction—Execution of orders under—Limitation for—Limitation Act (IX of* 1908), *Article* 183—*Applicability.*

The jurisdiction conferred on the High Court by the Banking Companies Act, 1949 is part of its Ordinary Original Civil Jurisdiction within the meaning of Article 183 of the Limitation Act so as to attract the twelve-year period of limitation for

execution of orders made under that Act. It makes no difference whether this jurisdiction is conferred by Clause 12 of the Letters Patent or by separate enactment.

I.L.R. 13 Bom. 520, followed.

59 M.L.J. 17 : I.L.R. 53 Mad. 237 and A.I.R. 1951 All. 362, referred.

S. Rangaswami Ayyangar and *N. Sankaran*, for Appellant.

S. Swaminathan, for Respondent.

R.M. ——— *Appeal dismissed.*

Rajagopalan, O.C.J. and Ramachandra Ayyar, J. Narayanaswami *v.* Mohan Prasad.
11th February, 1958. O.S. Appeal No. 165 of 1953.

Limitation Act (IX of 1908), *Articles* 74 *and* 116—*Covenant to pay a debt in instalments at stipulated period—Limitation how computed—Clause enabling creditor to sue for all the instalments together after the last instalment became due—If could extend the period of limitation.*

Where a bond provided that a debt secured thereunder will be paid in specified instalments at stated intervals, the limitation for the recovery of each of such instalments will run from the time when it became due. Article 74 read with Article 116 of the Limitation Act would apply to recovery of such instalments. The mere fact that the parties had agreed that the payment of the instalments need not be enforced as and when they become due, but can be enforced after all the instalments become due and payable, cannot have the effect of extending the period of limitation.

Generally speaking, interest due on a debt is only an accessory to the principal and where the claim in regard to the principal is barred the claim in regard to the interest would equally be barred. An exception to this rule is however recognised in cases where there is a separate covenant to pay interest.

Where there is a covenant to pay a debt with interest, but the principal amount is agreed to be paid in instalments, the mere fact that the recovery of certain instalments are barred by limitation cannot affect the recovery of the interest due on the principal debt as the covenant to pay interest is not ancillary to each of the instalments. The covenant to pay interest on the original debt is independent of the covenant to pay the instalments and as such a separate cause of action lies in respect of the interest.

(Case-law reviewed.)

P. S. Ramaswami Ayyangar, for Appellant.

B. V. Ramanarasu and *M. L. Nayak*, for Respondent.

R.M. ——— *Appeal allowed.*

Balakrishna Ayyar, J. Sitaraman *v.* Pattabhiraman.
13th February, 1958. C.M.P. No. 333 of 1958.

Civil Procedure Code (V of 1908), *section* 148—*Power of Court under.*

Section 148 of the Code of Civil Procedure no doubt empowers the Court in its discretion to extend the time fixed by it for doing an act. But that section presupposes the pendency of the suit, appeal or proceedings in which time was granted. Where the proceeding ceases to exist consequent upon a default clause provided in the order itself section 148 of the Code can have no application. Where an order directing security to be furnished has a default clause the Court has no power to extend the time for furnishing the security.

53 M.L.J. 494 ; (1956) An. W.R. 177, followed.

R. Gopalaswami Ayyangar and *V. S. Ramakrishnan*, for Petitioner.

Srinivasa Ayyar and *G. R. Jagadisan*, for Respondent.

R.M. ——— *Petition dismissed.*

Ramaswami, J. Srinivasa Pillai *v.* Kanniappa Pillai.
13th February, 1958. S.A. No. 1629 of 1951.

Negotiable Instruments Act (XXVI of 1881), *section* 87—*Material alteration of an instrument—What is—Affixture of additional stamp to make up deficiency—If amounts to material alteration.*

The test of what amounts to material alteration of a negotiable instrument within the meaning of section 87 of the Negotiable Instruments Act is to see whether

the alteration affects the rights or liabilities of the parties to the bill, whether it affects them prejudicially or not. Any change which varies the original legal effect and operation of the bill, unless assented to by the party affected thereby, will be a material alteration.

A promissory note which is not properly stamped is legally unenforceable and any addition of stamp to make it viable as a promissory note, without the consent of the promissor, is a material alteration which will render the instrument void.

Law in England and America explained—Case law discussed.

K. S. Naidu, for Appellant.

T. R. Ramachandran, for Respondent.

R.M. —— *Appeal dismissed.*

Balakrishna Iyer, J. Kuppuswami *v.* Ketty Muthu.
21st February, 1958. C.R.P. No. 1670 of 1957.

Madras District Municipalities Act (*V of* 1920), *sections* 44 (2) *and* 45—*Electoral rolls for municipal elections—Power of Government to direct revision—Scope of—Rules for decision of election disputes under—Rule* 2—*Time for presentation of election petition.*

Section 44 (2) of the Madras District Municipalities Act, 1920, as amended in 1950, takes away the power of the State Government to give directions for the preparation and publication of electoral rolls for municipal elections which they possessed under the former provision. Under the section as it stands at present the only power of the State Government is to direct the publication of such portions of the electoral roll which relate to the Municipality, out of the electoral roll prepared and revised under the Representation of People Act, 1950. The election authority has no power to add any new names to the list and their only power is to bring the list in accord with the electoral roll prepared for the relevant Assembly Constituency.

The prepositions 'if' and 'from' in rule 2 and the proviso respectively of the rules framed for decision of election disputes under the District Municipalities Act mean the same and the preposition 'of' is used sometimes equivalent to 'after'. Hence in either case the first day of reckoning the period of seven days fixed under the rule can be excluded.

K. Narayanaswami Mudaliar and *M. Thirugnanasundaram*, for Petitioner.

S. Mohan Kumaramangalam and *K. V. Sankaran*, for Respondents.

R.M. —— *Petition dismissed.*

Somasundaram, J. Santhanam *v.* Somasundaram.
4th March, 1958. C.R.P. No. 1343 of 1957.

Madras Cultivating Tenants Protection Act (*XXIV of* 1956), *section* 9 (2)—*Appeal under—'Every decision of a Rent Court'—If includes decisions on interlocutory applications as well.*

A right of appeal from the decision of a Court or Tribunal is not an inherent right but is one expressly conferred by the Statute. The right of appeal conferred by section 9 (2) of the Madras Cultivating Tenants Protection Act should be construed in the light of the foregoing sub-section, *viz.*, section 9 (1) of the Act. That is, only decisions falling within the scope of section 9 (1) will be appealable under section 9 (2) and decisions on ancillary applications in the main petition for the purposes mentioned under section 9 (1) of the Act are not decisions that are appealable under section 9 (2) of the Act. The expression 'every decision' in section 9 (2) of the Act could refer only to the final decision in regard to the rights of parties with reference to the dispute under section 9 (1) and does not include orders passed on Interlocutory Applications.

'Decision' Meaning of Explained.

G. R. Jagadisan, for Petitioner.

S. Mohan Kumaramangalam and *K. V. Sankaran*, for Respondent.

R.M. —— *Petition dismissed.*

[SUPREME COURT.]

S. R. Das, C.J., T. L. Venkatarama Aiyar, S. K. Das, A. K. Sarkar and Vivian Bose, JJ.
7th April, 1958.

Mithan Lal, etc. *v.* State of Delhi.
Petitions Nos. 15 and 16 of 1955.

Bengal Finance (Sales Tax) Act as extended to Delhi—Vires—Article 246 *of the Constitution of India* (1950)*—Part C States (Laws) Act.*

The decision of the Supreme Court in C.A. No. 210 of 1956, *State of Madras* v. *Gannon Dunkerley & Co., Ltd.*, dated 1st April, 1958, [(1958) 1 M.L.J. (N.R.C.) 50] did not apply to the present case. " It was submitted that the Delhi law was not enacted by a State Legislature but had been extended by Parliament under Article 246 (4) of the Constitution, and there was no bar on Parliament making a law to tax transactions other than a 'sale of goods'. Whether we view the notification as one extending a subsisting statute to Delhi or as extending it with modifications so far as the impugned provisions are concerned, they are *intra vires*."

R. L. Aggarwal, for Appellant.

C. K. Daphtary, Solicitor-General of India, for Respondents.

T. M. Sen, for the States of Madras and Mysore, *G. C. Mathur*, for the State of U. P. and *S. B. Sehva*, for the State of Kerala, Interveners.

G.R. — *Petitions dismissed.*

[SUPREME COURT.]

S. R. Das, C.J., T. L. Venkatarama Aiyar, S. K. Das, A. K. Sarkar and Vivian Bose, JJ.
7th April, 1958.

Pyarelal Hari Singh & Co. *v.* The State of Punjab.
Petition No. 128 of 1957.

East Punjab General Sales Tax Act, 1948*—" Sale of goods "—Supply of the materials used in construction works.*

Applying the deceision of the Supreme Court in C.A. No. 210 of 1956, *State of Madras* v. *Gannon Dunkerley & Co., Ltd.*, dated 1st April, 1958 [(1958) 1 M.L.J. (N.R.C.) 50] the provisions of the East Punjab General Sales Tax, 1948, imposing sales-tax on the supply of the materials used in construction works, treating it as a 'sale of goods' were held to be *ultra vires*.

Gopal Singh, for Petitioner.

N. S. Bindra, for Respondents.

G.R. — *Petition allowed.*

[SUPREME COURT.]

N. H. Bhagwati, J. L. Kapur and A. K. Sarkar, JJ.
7th April, 1958.

J. K. Chaudhuri *v.* R. K. Dutta Gupta.
C.A. No. 321 of 1957.

Gauhati University Act—Powers of the University—If can interfere with order of governing body of a College dismissing its Principal.

Under the provisions of the Gauhati University Act the University had no power to interfere with the action taken by the governing body of a College in dismissing its Principal. The term " employee " did not include a Principal, and the jurisdiction of the University under the Act extended only to that category of employees who were classed as teachers.

R. Chaudhuri, for Appellant.

N. C. Chatterji, for Respondent.

G.R. — *Appeal allowed.*

[SUPREME COURT.]

S. R. Das, C.J., S. K. Das, Gajendragadkar, and Vivian Bose, JJ.
11th April, 1958.

Nagpur Elec. Light & Power Co. *v.* Shreepat Rao.
C.A. No. 5 of 1958.

Madhya Pradesh Industrial Disputes Act—Discharge of employee under the Standing Orders of a Company—Legality.

On a true construction of the Standing Orders of the company it must be accepted that the respondent was governed by them. In view of the fact that he was covered

by these standing orders and his discharge had been effected under the appropriate orders, the orders of the company were held to be legal and effective.

M. C. Setalvad, Attorney-General of India, for Appellant.

R. S. V. Mani, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

N. H. Bhagwati, J. L. Kapur and A. K. Sarkar, JJ.
14th April, 1958.

B. N. Srikantiah *v.* State of Mysore.
Cr. As. Nos. 120 and 121 of 1955.

Penal Code (XLV of 1860), *section* 34 *and Criminal Procedure Code (V of* 1898), *section* 537—*Scope.*

Applying the previous decisions in (1955) 2 S.C.R. 1140 : 1956 S.C.J. 182 : (1956) 1 M.L.J. (S.C.) 100 : (1956) A.W.R. (S.C.) 100 and A.I.R. 1956 S.C. 171, the appellant's appeal was dismissed because the omission to mention section 34 of the Indian Penal Code in the charge cannot affect the case unless prejudice is shown to have resulted in consequence thereof. The question as to effect of omission to mention section 34, Penal Code, is academic.

(1929) L.R. 57 I.A. 71 at 76 and (1947) 1 M.L.J. 219 : L.R. 74 I.A. 65 at 75 : I.L.R. (1948) Mad. 1 (P.C.) considered.

V. Krishnamurthy, for Appellant.

G. Channappa, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

S. R. Das, C.J., N. H. Bhagwati, S. K. Das, J. L. Kapur and Vivian Bose, JJ.
15th April, 1958.

Mahadayal Premchandra *v.* C.T.O., Calcutta.
C.A. No. 344 of 1957.

Sales tax—Sales-tax on Commission Agent—Procedure for getting 'instructions' from Assistant Commissioner.

" The procedure adopted was, to say the least, unfair and was calculated to undermine the confidence of the public in the impartial and fair administration of the sales tax department concerned ".

N. C. Chatterji, for Appellant.

C. K. Daphtary, Solicitor-General of India, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

S. R. Das, C.J., T. L. Venkatarama Aiyar, S. K. Das, A. K. Sarkar and Vivian Bose, JJ.
15th April, 1958.

Sales Tax Officer, Cuttack *v.* B. C. Patel & Co.
C.A. No. 23 of 1956.

Orissa Sales Tax Act, 1947—*Extra-Provincial Jurisdiction Act,* 1947—*Pre and Post-Constitution Assessment periods—Article* 286 *of the Constitution—Bengal Finance (Sales Tax) Act,* 1941.

By three separate Judgments the appeal was partly allowed.

The notification of March 1, 1949, was not in conformity with law, but the assessment orders for the pre-Constitution period were justified under section 4 (2) of the Orissa Sales Tax Act, as all requirements of sub-section (2) were fulfilled in this case. The effect of the invalid notification under sub-section (1) was that there was no liability thereunder and no dealer was liable to pay tax under that sub-section. It, however, did not mean that any dealer, who properly came under sub-section (2) could escape liability to pay tax. The assessments came under the purview of Article 286 (1) (*a*), as also section 30 (1) (*a*) (*i*) of the Act, and so were held to be without jurisdiction.

C. K. Daphtary, Solicitor-General of India, for Appellants.

Nemo, for Respondent.

G.R. *Appeal partly allowed.*

[SUPREME COURT.]

N. H. Bhagwati, J. L. Kapur, and A. K. Sarkar, JJ.
15th April, 1958.

Seth Gangadhar *v.* Shankarlal.
C.A. No. 150 of 1954.

Transfer of Property Act (IV of 1882)—Clog on equity of redemption—Usufructuary mortgage for 85 years.

The term of the length of the period of mortgage was not by itself a clog on the right of redemption.

Tarachand Brijmohanlal, for Appellant.

S. S. Didwani and *K. L. Mehta*, for Respondents.

G.R. *Appeal dismissed.*

Ramaswami, J.
13th March, 1958.

Veluchami, *In re.*
Cr. P.C. No. 883 of 1957.

Madras Borstal Schools Act (V of 1926), section 7 (1) and Criminal Procedure Code (V of 1898), section 349—Submission of records by a Magistrate under—Difference between.

Under section 349 of the Code of Criminal Procedure a magistrate of the second or third class can submit the proceedings to the District or Sub-Divisional Magistrate to whom he is subordinate only under two circumstances, *viz.*, (1) where the punishment to be inflicted is different in kind from that which he is empowered to inflict and (2) the punishment which the offence deserves is more severe than the one which he is empowered to inflict. It is open to the Magistrate to whom the proceedings are submitted, if he thinks fit, to examine the parties or witnesses and come to his own conclusion regarding the conviction itself and pass the appropriate sentence or order. But in cases of submission of records under section 7 (1) of the Madras Borstal Schools Act it is the duty of the Magistrate who submits the records to find the accused guilty and transmit the records without passing any sentence. In such cases it is open to the Magistrate to whom the records are sent to make enquiries and come to his own conclusion only as regards the sentence, *viz.*, whether the adolescent offender should be detained in a Borstal School or not. As regards the finding of guilty he is bound by the opinion of the Magistrate who transmitted the records.

The Public Prosecutor (*P. S. Kailasam*) for the State.

R.M. *Reference rejected.*

Ramachandra Iyer, J. Sellamuthu Chettiar *v.* Veerasikkhiah Gounder.
14th March, 1958. C.R.P. Nos. 740 and 761 of 1957.

Madras Cultivating Tenants Protection Act (*XXV of* 1957) *as amended by Madras Act XIV of* 1956, *section* 4 (5)—*Cultivating tenant evicted in execution of decree—When entitled to be restored to possession.*

Under section 4 (5) of the Madras Cultivating Tenants Protection Act, 1955, as amended by Act XIV of 1956, a cultivating tenant, who has been dispossessed of his holding after the commencement of the Act in execution of a decree, is entitled to apply for restoration to possession. The mere fact the suit was pending when the Act came into force and the cultivating tenant did not raise any defence on the ground that he is entitled to the benefit of the Act will not preclude him from claiming his right to restoration of possession as the right is given even in cases where the tenant has been evicted under a decree of Court.

Where land in the occupation of a tenant was sold and the purchaser required the tenant to attorn to him and the tenant refused to do so and set up title in the vendor, his previous landlord, it cannot be said that his possession is under an agreement, express or implied with the purchaser owner. On the contrary the conduct of the tenant in denying the title of the purchaser would negative any such inference.

M. Natesan, for Petitioner.

U. Somasundaram and *P. Kothandaraman,* for Respondent.

R.M. *Case remanded.*

Ramaswami, J. V. P. S. Subbiah Chettiar, *In re.*
20th March, 1958. S.R. No. 4968 of 1958.

Hindu Marriage Act (*XXV of* 1955), *section* 28—*Scope of—Proceedings under the Act—Appeal against order if lies—Revision against order—When lies.*

Reading section 28 of the Hindu Marriage Act, 1955, in the context of section 104 and Order 43, rule 1, of the Code of Civil Procedure, it is clear that no appeal could lie from an order under the Act as it is not made an appealable order under the Code. A person aggrieved by an order under the Act may, in appropriate cases, be entitled only to file a revision to the High Court.

K. S. Venkataramani and *S. B. Mani,* for Appellant.

V. Ramaswami, for Additional Government Pleader (*K. Veeraswami*), for Respondent.

R.M. *Answer accordingly.*

Rajagopalan, J. Kothandaraman *v.*
27th March, 1958. Chief Conservator of Forests.
W.P. No. 1192 of 1956.

Civil Services Classification, Etc., Rules, rule 17 (*b*)—*Applicability to termination of probation of civil servants.*

The procedure prescribed by rule 17 (*b*) of Civil Services Classification, etc., Rules would not apply to proceedings taken to terminate the probation of civil servants.

Quaere.—Whether a mere violation of rule 17 (*b*) of the Civil Services Classification, etc., Rules, by itself, without anything more, would justify the invoking of the jurisdiction of the High Court under Article 226 of the Constitution ?

Md. Askarali, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), for Respondent.

R.M. *Petition dismissed.*

[SUPREME COURT.]

N. H. Bhagwati, J.L. Kapur and A. K. Sarkar, JJ.
22nd April, 1958.

Kamaraja Nadar *v.* Kunji Thevar, etc.
C. A. Nos. 763 of 1957, 764 of 1957 and 48 of 1958.

Representation of the People Act (XLIII of 1951), *sections* 82 *and* 117—*The term "contesting candidate" in the Representation of the People Act includes a candidate who has retired from the election contest after the last date for withdrawal but before the final poll is taken.*

If the provisions of section 82 which prescribes who shall be joined as respondents to the petition are not complied with, the Election Commission is enjoined under section 85 of the Act to dismiss the petition and similar are the consequences of non-compliance with the provisions of section 117 relating to deposit of security for costs. If the Election Commission however does not do so and accept the petition, it has to cause a copy of the petition to be published in the Official Gazette and a copy thereof, to be served by post on each of the respondents and then refer the petition to an Election Tribunal for trial. Section 90(3) similarly enjoins the Election Tribunal to dismiss an election petition which does not comply with the provisions of section 82 or section 117 notwithstanding that it has not been dismissed by the Election Commission under section 85. Section 90 (3) is mandatory and the Election Tribunal is bound to dismiss such a petition.

The words "in favour of the Secretary to the Election Commission" used in section 117 are directory and not mandatory in their character. No such literal compliance with the terms of section 117 is at all necessary as is contended for on behalf of the appellant before us.

Having regard therefore to the conclusion reached above in regard to the non-compliance with the provisions of section 82, Civil Appeal No. 763 of 1957 will be allowed, the orders of dismissal made by the High Court on the Writ Petition Nos. 531 of 1957 and 532 of 1957 will be set aside, the orders passed by the Election Tribunal, dated July 5, 1957 will be vacated and the Election Petition No. 147 of 1957 will be dismissed with costs.

Civil Appeal No. 764 of 1957 also shares a similar fate. The first respondent therein did not join as party respondents to his petition the two candidates whose names had been included by the returning officer in the list of contesting candidates but who had subsequently retired from the contest before the commencement of the poll. They were necessary parties to the petition in so far as the first respondent had claimed a further declaration that he himself be declared duly elected under section 101. The Election Petition No. 74 of 1957 filed by him was thus liable to be dismissed for non-joinder of necessary parties under section 90(3) of the Act. This appeal will also be accordingly allowed, the orders passed by the High Court in Writ Petitions Nos. 573 and 574 of 1957 will be set aside, the orders passed by the Election Tribunal on July 13, 1957, will be vacated and Election Petition No. 74 of 1957 will be dismissed, the first respondent will pay the appellant's costs throughout.

So far as Civil Appeal No. 48 of 1958 is concerned, the difficulty which faces the appellant is that we have nothing on the record of the appeal to show what were the exact terms of the deposit made by the second respondent under section 117.

We are, therefore, of the opinion that the orders passed by the High Court in M.J.C. No. 480 of 1957 and by the Election Tribunal in Election Petition No. 341 of 1957 were wrong and ought to be set aside.

The preliminary objection must be entertained and decided by the Election Tribunal to avoid unnecessary expense and delay.

M. C. Setalvad, Attorney-General, for Appellant in C. A. No. 763 of 1957.
Ganpathy Iyer, for Respondent in C.A. No. 763 of 1957.
Rama Reddi, for Appellant in C.A. No. 764 of 1957.
R. Ganpathi Aiyar, for Respondents in C.A. No. 764 of 1957.
Parshotam Das Tricumdas, for Appellant in C.A. No. 48 of 1958.

M—N R C

R. Patnaik, for Respondents in C.A. No. 48 of 1958.

Y. B. Chavan, C. K. Daphtary, Solicitor-General of India, for Intervener in C.A. No. 763 of 1957.

G.R. —— *Appeals decided as above.*

[SUPREME COURT.]

N. H. Bhagwati, J. L. Kapur and A. K. Sarkar, JJ.
22nd April, 1958.

T. M. Bassappa *v.* D. Ayyappa.
C.A. No. 76 of 1958.

Representation of the People Act (*XLIII of* 1951), *section* 97—*Order* 23, *rule* 1, *Civil Procedure Code—Scope.*

There is no power in the Election Commission to allow a petitioner to withdraw or abandon a part of his claim either by having resort to Order 23, rule 1, Civil Procedure Code or otherwise. If that is so, the right of recrimination which has once accrued to the returned candidate or any other party under section 97 of the Act cannot be taken away, and the returned candidate or any other party to the petition would in such circumstances be entitled to give evidence to prove that the election of the petitioner or any other candidate sponsored by him would have been void if he had been the returned candidate and a petition had been presented calling in question his election.

G. S. Pathak, for Appellant.

Rama Reddy, for Respondent.

G.R. —— *Appeal allowed.*

[SUPREME COURT.]

S. R. Das, C. J., T. L. Venkatarama Aiyar, S. K. Das, P. B. Gajendragadkar and Vivian Bose, JJ.
23rd April, 1958.

Mohd. Hanif Quareshi *v.* State of Bihar, etc.
Petitions Nos. 58, 83, 84, 103, 117, 126, 127, 128, 248, 144 and 145 of 1956; 129 of 1957.

Bihar Act (*II of* 1956)—*Uttar Pradesh Act* (*I of* 1956)—*C. P. and Berar Act* (*III* 1949)—*Articles* 13, 19, 25, 48, 245 *and* 246, *Entry* 15, *List II of Seventh Schedule of the Constitution of India—Acts prohibiting slaughter of cows, etc.—Constitutional validity.*

"The result is that we uphold and declare that the Bihar Act in so far as it prohibits the slaughter of cows of all ages and calves of cows and calves of buffaloes, male and female, is constitutionally valid and we hold that, in so far as it totally prohibits the slaughter of she-buffaloes, breeding bulls and working bullocks (cattle and buffalo), without prescribing any test or requirement as to their age or usefulness, it infringes the rights of the petitioners under Article 19(1) (*g*) and is to that extent void."

"As regards the Uttar Pradesh Act we uphold and declare, for reasons already stated, that it is constitutionally valid in so far as it prohibits the slaughter of cows of all ages and calves of cows, male and female, but we hold that in so far as it purports to totally prohibit the slaughter of breeding bulls and working bullocks without prescribing any test or requirement as to their age or usefulness, it offends against Article 19(1) (*g*) and is to that extent void".

"As regards the Madhya Pradesh Act we likewise declare that it is constitutionally valid in so far as it prohibits the slaughter of cows of all ages and calves of cows, male and female, but that it is void in so far as it totally prohibits the slaughter of breeding bulls and working bullocks without prescribing any test or requirement as to their age or usefulness. We also hold that the Act is valid in so far as it regulates the slaughter of other animals under certificates granted by the authorities mentioned therein.

H. J. Umrigar and *Frank Antoney*, for Petitioners.

C. K. Daphtary, Solicitor-General of India and *Mahavir Prasad*, Advocate-General, Bihar, for the State of Bihar.

H. N. Sanyal, Additional Solicitor-General of India, for the State of Uttar Pradesh.

Adhekari, Advocate-General, Madhya Pradesh, for the State of Madhya Pradesh.

Shri Thakar Dass Bhargava, Amicus-curiae.

G.R. —— *Petitions partly allowed.*

Rajagopalan, O.C.J., and Ramachandra Iyer, J.
13th February, 1958.

Sarojini *v.* Krishnamurthi.
L.P.A. No. 140 of 1957.

Madras Hindu (Bigamy Prevention and Divorce) Act (VI of 1949) *(since repealed by Central Act XXV of* 1955), *section* 5 (8)—*Provision as to custody of children while ordering dissolution of a marriage—Scope of power of Court.*

Under section 5 (8) of the Madras Hindu (Bigamy Prevention and Divorce) Act, 1949 (since repealed by the Central Act (XXV of 1955) the Court gets jurisdiction to make orders as to the custody of children only when it orders the dissolution of a marriage. Where the Court refuses the prayer for dissolution of the marriage the Court has no jurisdiction to go into the question of custody of the children.

D. R. Krishna Rao and *I. Chakrapani*, for Appellant.

E. Krishnamurthi, for Respondent.

R.M. ——— *Appeal allowed.*

Ramaswami, J.
20th February, 1958.

Athmanatha Thevar *v.* Rangaswami Thevar.
C.M.P. No. 6738 of 1957.
(Appeal No. 1232 of 1953.)

Practice—Appeal disposed off by a single Judge of the High Court—Subsequent petition for amendment of the judgment and decree filed—Letters Patent Appeal filed and dismissed in limine *during the pendency of the petition for amendment—Power of Court to order amendment.*

Civil Procedure Code (V of 1908), *section* 152 *and Order* 41, *rules* 11 *and* 32—*Power of Court which passed a decree to amend the same—Effect of dismissal of an appeal* in limine.

It is a well-settled proposition of law that a Court which passed a decree has got jurisdiction to amend the same until it is superseded in appeal or revision. Where the decree of a lower Court is confirmed, reversed or varied by an appellate Court, it is superseded by the appellate decree and any amendment to the same can be done only by the appellate Court. But where an appeal is dismissed *in limine* or withdrawn or portions of the decree are outside the scope of the appeal, the lower Court is still entitled to amend the decree or such portion of it.

Unless the lower Court's decree has become merged in an appellate Court's decree by a disposal on merits of the appeal, the lower Court is the proper Court for amending the decree, in which the mistake occurs and which is the substantive decree to be executed.

A.I.R. 1953 Bom. 122: I.L.R. 11 Pat. 409 and I.L.R. 21 Bom. 548, followed.

(1946) 1 M.L.J. 393, differed.

Difference between the dismissal of an appeal under Order 41, rule 11 and Order 41, rule 32, discussed and case law referred.

R. Sundaralingam, for Petitioner.

K. S. Desikan and *K. Raman*, for Respondents.

R.M. ——— *Orders accordingly.*

Panchapakesa Ayyar and
Basheer Ahmed Sayeed, JJ.
26th February, 1958.

Marey Joseph *v.*
Jayub Mohamed.
S.A. No. 1065 of 1954.

Specific Relief Act (I of 1877), *section* 27 (b)—*Transferee for value without notice—'Paid his money'—Meaning of—If payment should be only in cash.*

The phrase 'paid his money' in section 27 (*b*) of the Specific Relief Act means paid money or money's worth and would include payment in cash or by adjustment of a debt due. Section 27 (*b*) can be taken advantage of in all cases where the transferee has parted with his money by way of cash, currency notes or gold or money's worth by way of adjusting a pre-existing debt provided he had no notice, actual or constructive, of any prior agreement.

T. P. Gopalakrishnan, for Appellant.

T. T. Srinivasan and *C. Sampath*, for Respondent.

R.M. ——— *Appeal dismissed.*

Ramaswami, J. Rahamath Bi *v.* Ahmed Mohideen.
27th February, 1958. S.A. No. 1163 of 1955.

Mahomedan Law—Maintenance—Duty of father to maintain daughter—Extent of.

Under the Muslim Personal Law a father is bound to maintain his daughter until she is married. The fact that the daughter has attained puberty does not absolve the father of his duty to maintain his daughter till she is married. The liability of the father is absolute and is not dependant on his property. So long as the father is capable of earning his indigence cannot affect the duty.

K. V. Srinivasa Ayyar, for Appellant.

M. R. Narayanaswami, for Respondent.

R.M. ——— *Appeal allowed in part.*

[Full Bench.]

Rajagopalan, Balakrishna Ayyar and Ramachandra Iyer, JJ. An Advocate, *In re.*
28th February, 1958. R.C. No. 97 of 1957.

Legal Practitioners Act (XVIII of 1879)—*Professional conduct—Advocate who has given opinion for one side in a criminal case—If could accept an engagement for the opposite side at a subsequent stage of the case.*

Whatever may be the position in civil cases an advocate who has given an opinion for one side in a criminal case should not accept an engagement at subsequent stage of the case for the opposite side. The employment places him in a position of confidence and imposes on him a duty not to use the information so gained, unwittingly or otherwise, to the detriment of his client. That duty continues even after the relationship of advocate and client ceases and does not depend on the fact whether the party employs him in the subsequent stage of the case or not. The office of a Public Prosecutor is one of considerable prestige and responsibility and nothing should be allowed to be done which would have the effect of impairing the confidential advice which he is often called upon to give or by undermining the confidence of the public in the purity of Criminal Law Administration. It is improper for an advocate who held the office of a Public Prosecutor or was engaged as a Special Prosecutor to accept an engagement for the defence in a case in which at an earlier stage he advised or gave an opinion to the Prosecutor or appeared for the prosecution at the stage of interlocutory applications like bail, etc.

The Advocate-General (*V. K. Thiruvenkatachari*), for Petitioner.

M. S. Venkatarama Ayyar and *K. Kalyanasundaram*, for Respondents.

The Additional Government Pleader (*K. Veeraswami*), for the State.

R.M. ——— *Respondent censured.*

[Full Bench.]

Rajamannar, C.J., Panchapakesa Ayyar and Ramachandra Iyer, JJ. Board of Revenue *v.* Simson & McConochie, Ltd.
3rd March, 1958. R.C. No. 23 of 1957.

Stamp Act (II of 1899)—*Document whether lease or mortgage—Lease deed with a right of subrogation in favour of the lessee in respect of a mortgage discharged by the lessee by advancing the requisite amount as rent advance—Document if amounts to a mortgage.*

Transfer of Property Act (IV of 1882), *section* 92 (3)—*Subrogation—Nature of.*

An agreement as to right of subrogation to the rights of a mortgagee as contemplated under section 92 (3) of the Transfer of Property Act is not by itself a mortgage. Hence whereunder a registered lease deed the lessee advances money to his lessor to pay off a mortgage on the leased property, which advance is to be adjusted towards the monthly rents payable under the lease, the mere fact that the lease deed provides that the lessee shall be subrogated to the rights of the mortgagee whose mortgage was redeemed out of the advance paid by him will not make the lease deed a mortgage with possession for purposes of stamp duty, if the deed is in all other respects only a lease deed.

The Government Pleader (*B. V. Viswanatha Iyer*), for Petitioner.

N. K. Mohanarangam Pillai and *N. K. Pattabhiraman*, for Respondents.

R.M. ——— *Answer accordingly.*

Panchapakesa Ayyar, J. Nagaraja Dikshithar *v.* Sundaresa Sastrigal.
3rd March, 1958. A.A.A.O. No. 8 of 1956.

Madras Agriculturists Relief Act (IV of 1938), *section* 9-*A—Transfer of mortgagees' interest during the specified statutory period—Exemption from scaling down—Object of—Scope of exemption.*

Under the provisions of section 9-A of the Madras Agriculturists Relief Act where the mortgagees' interest is transferred in whole or in part during the relevant period between 30th September, 1937 and 30th January, 1948, is transferred *bona fide* and for valuable consideration such transferee is entitled to immunity from the scaling down provisions of the section. The object of this was to protect those transactions that were entered into on the basis of the law then prevailing as regards usufructuary mortgages. It is true that the benefit of the immunity can be claimed by transferees of the mortgagees' interest provided the transfer is within the period mentioned and is of the entirety of the mortgagees' interest even though the transfer is in respect of certain items of a number of items of the mortgaged properties. But a sub-mortgagee or lessee cannot be said to be a transferee of the entire rights of a mortgagee and as such cannot claim the immunity from scaling down.

(1956) 1 M.L.J. 589 and (1954) 1 M.L.J. 578, followed.

G. R. Jagadisan, for Appellant.

P.N. Venugopalan, N. Sivamani, A. Nagarajan and *A. Viswanathan*, for Respondents.

R.M. *Appeal allowed : Leave granted.*

Rajamannar, C.J., and
Ramachandra Iyer, J.
4th March, 1958.

Thiruvengada Mudaliar *v.* Narayana Reddiar.
L.P.A. No. 195 of 1957.

Practic.—Declaratory suits—If maintainable apart from section 42, *Specific Relief Act—Specific Relief Act* (I of 1877), *section* 42—*If exhaustive of the category of declaratory suits.*

Section 42 of the Specific Relief Act is not exhaustive of the category of declaratory suits and suits for a mere declaration are permissible though they are not of the nature specified in the said section. A suit by a decree-holder for a declaration that a sale of the property of the judgment-debtor in execution of a decree obtained by another creditor is fraudulent and collusive and that the judgment-debtor still continued to be the real and beneficial owner of the property sold is maintainable.

I.L.R. (1943) Mad. 47 : (1942) 2 M.L.J. 213, followed.

(1944) 2 M.L.J. 231, doubted and distinguished.

T. C. A. Bhashyam and *T. C. A. Tirumalachari*, for Appellant.

U. Somasundaram, for Respondent.

R.M. *Appeal dismissed.*

Rajamannar, C.J., and Ramachandra Iyer, J. Pushpavathi *v.* Narayana.
15th March, 1958. L.P.A. No. 224 of 1954.

Letters Patent (Madras), clause 15—*Appeal against an order in an appeal against an appellate order of a Subordinate Court—Leave of Court—Necessity.*

Where an appeal under clause 15 of the Letters Patent is sought to be filed against an order of a Judge of the High Court passed in exercise of the Appellate jurisdiction in respect of a decree or order made in the exercise of its appellate jurisdiction by a Subordinate Court, leave of the Judge who made the order should be obtained without which no such appeal is maintainable.

(1938) 1 M.L.J. 402, referred.

E. R. Krishnan, for Appellant.

M. S. Venkatarama Iyer, for Respondent.

R.M. *Preliminary objection upheld.*

Rajamannar, C.J., and Ramachandra Iyer, J.
18th March, 1958.

Ramanuja Naicker *v.* Seethalakshmi Ammal.
L.P.A. No. 199 of 1957.

Execution—Declaratory decree that the decree-holder will be entitled to certain sums the payment of which is charged on certain properties—No direction as to payment by judgment-debtors or sale of the charged properties in default of payment—Executability.

A decree which only declares the rights of a party to certain amounts and that the said amount will be a charge on certain properties and there is no direction that the amount should be paid by the other party on or before a specified date and that in default of such payment the properties charged should be sold, is not executable as such in the form in which it is drafted. The proper course in such cases is to apply to the Court to make suitable modifications to make the decree in form executable.

A. K. Annaswami Ayyar, V. Ratnam and *A. Ramanathan*, for Appellant.

G. Ramanujam and *V. R. Venkataswami*, for Respondent.

R.M. ——— *Appeal allowed.*

Ramaswami, J.
20th March, 1958.

Mahaboo Bivi *v.* Abdul Hameed.
C.R.P. No. 75 of 1958.

Madras Court-fees and Suits Valuation Act (XIV of 1955), *sections* 28 *and* 53 (1)—*Suit for possession of trust property—Pecuniary jurisdiction of Court—Determination of—Computation of Court-fee—One-fifth of the market-value of the property subject to a maximum fee of Rs* 200—*Effect of—Madras Civil Courts Act (III of* 1873), *section* 12.

Section 28 of the Madras Court-fees and Suits Valuation Act, which relates to particular classes of suits in regard to trust property. The valuation for purposes of Court-fees is to be one-fifth of the market value of the property. But there is also a maximum Court-fee prescribed under the section for those classes of cases. The effect of this is that for purposes of pecuniary jurisdiction of the Court and the quantum of Court-fee the valuation is on the basis of one-fifth of the market-value of the property, but a concession is shown by way of a ceiling on the quantum of Court-fee. Reading sections 28 and 53 (1) of the Act together the pecuniary jurisdiction of Court for such suits has to be determined only on the basis of the market-value and not on the concessional ceiling on the quantum of Court-fee payable.

M. M. Ismail, for Petitioner.

T. S. Kuppuswami Ayyar and The Additional Government Pleader (*K. Veeraswami*), for Respondents.

R.M. ——— *Petition allowed.*

Somasundaram, J.
24th March, 1958.

Swamiappa Mudaliar *v.* Ponnammal.
Cr. Rev. C. No. 806 of 1957.

Madras Buildings Lease and Rent Control Act (XXV of 1949) *and Criminal Procedure Code (V of* 1898), *section* 476—*Leave to prosecute for an offence relating to documents filed before Rent Controller—Leave refused—Remedy of party—If by way of civil or criminal revision.*

Where a party applies to the Rent Controller for prosecuting a person for filing a false document in proceedings before him and the Rent Controller refuses to initiate proceedings the remedy of the party is to appeal to the Civil Court and apply in revision to the High Court under section 115 Civil Procedure Code, as the matter relates to proceedings before a civil Court, and a civil Court does not cease to be so when considering an application under section 476, Criminal Procedure Code.

Messrs. Row and Reddy and *A. Madhavan*, for Petitioner.

The Public Prosecutor (*P. S. Kailasam*), for the State.

T. R. Ramachandran, for Respondents Nos. 1 and 2.

R.M. ——— *Petition dismissed.*

Rajagopalan and Balakrishna Ayyar, JJ.
25th March, 1958.

C. M. Kothari *v.* Commissioner of Income-tax.
R.C. No. 12 of 1954.

Income-tax Act (XI of 1922), *section* 16 (3) (a) *(iii)—Scope of—Direct or indirect transfer of assets by husband to the wife—What amounts to.*

It is no doubt true that section 16 (3) (*a*) (iii) of the Income-tax Act provides that in computing the total income of an individual so much of the income of the wife of such individual which arises from assets transferred directly or indirectly by the husband to the wife otherwise than for adequate consideration, etc., will also be included. But mere evidence of a cross-gift or cross-transfer with nothing more may not lead to an inference of an indirect transfer of assets nor the fact that such cross-transfers were simultaneous in point of time. Unless it is found that the cross-transfers constituted a single transaction and there is a mutuality between the two transfers in the sense of one forming the consideration of the other, such an inference is not possible.

M. Subbaraya Ayyar, V. Sethuraman and *S. Padmanabhan*, for Petitioner.

C. S. Rama Rao Sahib, Special Counsel for Income-tax, for Respondent.

R.M. *Reference answered accordingly.*

Somasundaram and Basheer Ahmed Sayeed, JJ.
31*st March*, 1958.

Fernandez, *In re.*
Crl. Appeal No. 629 of 1956.

Criminal Law Amendment Act (XLVI of 1952), *sections* 7 *and* 9 (6)*—Special Judge acting under—Status of—If a Magistrate or Sessions Judge—Special Judge if could pronounce judgment on the basis of the evidence recorded by his predecessor in office—Criminal Procedure Code (V of* 1898), *section* 350*—Applicability to Special Judges under Central Act XLVI of* 1952*—Criminal Law Amendment Act (II of* 1958), *section* 8 (3-*A*)*—Effect of new amendment.*

Per Full Bench: *Rajagopalan, Somasundaram* and *Balakrishna Iyer, JJ.* (4th March 1958).

The ordinary rule in Criminal Procedure Code is that judgment in any case should be delivered only by the Judge who has heard the whole of the evidence in the case. The only exception to this rule is that created by section 350, Code of Criminal Procedure, which empowers a Magistrate to dispose of a case on evidence heard in part by himself and in part by his predecessor or predecessors. But even this exception is not applicable to a Court of Sessions.

An analysis of the four sub-sections of section 8 of the Criminal Law Amendment Act, 1952, shows that a special Judge officiating under that Act is neither a Magistrate nor a Sessions Judge. He is deemed to be a Magistrate for certain purposes and he has got the powers of a Sessions Judge for certain other purposes. He occupies an anomalous position and will be a Court constituted under any other law as contemplated by the classification of Criminal Courts under section 6 of the Criminal Procedure Code.

Having regard to the cardinal rule of procedure in criminal matters and having regard to the pattern of legislation creating special Courts and investing them with specific powers on procedural matters, in the absence of express provision in any statute, it cannot be presumed that the Legislature intended to depart from the normal procedure applicable to trial of criminal cases when they are tried by special Courts. The Criminal Law Amendment Act, 1952 (before its recent amendment by Act II of 1958) did not contain an express provision, as many similar legislations of the time did, similar to the one contained in section 350 of the Code of Criminal Procedure, dispensing with *de novo* trial in cases of change in the personnel of the special Court trying a case under that Act. Hence the right of an accused to demand a *de novo* trial in such cases could not be negatived as section 350 of the Code of Criminal Procedure was not made applicable to the Special Court.

(Effect of amendment of section 350, Criminal Procedure Code, by Amending Act, 1955, giving the Court discretion in the matter indicated)

A.I.R. 1954 Mad. 350, M.L.J. held not good law.

A.I.R. 1954 Pat. 543, approved.

I.L.R. [illegible] Mad. 112, referred.

(Per Division Bench *Somasundaram* and *Basheer Ahmed Sayeed, JJ.*) (31st March, 1958).

Since the expression of the opinion of the Full Bench, section 350 of the Code of Criminal Procedure has been expressly made applicable to proceedings before a Special Judge under Central Act XLVI of 1952 by Amending Act II of 1958. The conviction based on evidence partly recorded by the Special Judge and partly by his successor before the amendment is void and should be set aside.

P. N. Menon and *S. Pichai*, for Appellant.

The Advocate-General (*V. K. Thiruvenkatachari*) and the Public Prosecutor (*P. S. Kailasam*) for the State.

R.M. ——— *Conviction set aside: No retrial.*

Balakrishna Ayyar, J. Depty Lal *v.* Collector of Nilgiris.
4th April, 1958. W.P. No. 76 of 1958.

Administration of Evacuee Property Act (*XLIV of* 1954), *section* 29—*Property of an evacuee in possession of a tenant transferred to another—Transfer—When takes place.*

It is true that where the property of an evacuee, which is in lawful possession of any person, is transferred to another, under section 29 of the Administration of Evacuee Property Act, the person in possession is not liable to be evicted therefrom for a period of two years. But this right of the person in possession could arise only on the transfer being complete, *i.e.*, when the sale certificate is issued to the purchaser. The mere fact that a property was sold in an auction and a particular bid was accepted by the Settlement Commissioner does not make the transfer complete to attract the provisions of section 29 of the Act.

R. Gopalaswami Ayyangar, for Petitioner.

The Government Pleader (*B. V. Viswanatha Iyer*), for Respondent.

R.M. ——— *Petition dismissed.*

Rajagopalan, J. Seenu & Co. *v.* State of Madras.
15th April, 1958. W.P. No. 771 of 1957.

Drug and Magic Remedies (*Objectionable Advertisements*) *Act* (*XXI of* 1954), *section* 14 (d)—*Power of State Government under to revoke a permission once granted—Nature of.*

The power of the State Government under section 14 (*d*) of the Drug and Magic Remedies (Objectionable Advertisements) Act, 1954, to sanction advertisements carries with it the power to revoke the sanction in appropriate cases. The power to revoke a sanction once granted is as much a statutory power as the power to grant the sanction. An order revoking a sanction might be administrative in scope but as it is in the nature of cancelling a license once granted it cannot be done in violation of the elementary principle of natural justice, *viz.*, that the party affected should be heard before an order detrimental to his interests is made by the Statutory Authority. The State Government should itself apply its mind before passing an order under section 14 (*d*) and an order merely in obedience to a direction from the Government of India will not be valid.

K. V. Venkatasubba Ayyar, R. M. Seshadri and *S. Bhaskaran*, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), for Respondent.

R.M. ——— *Rule absolute.*

[END OF (1958) 1 M.L.J. (N.R.C.)]